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Is Sweeping Change Possible? Minnesota Adopts the Uniform Interstate Family Support Act

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IS SWEEPING CHANGE POSSIBLE? MINNESOTA ADOPTS THE UNIFORM INTERSTATE FAMILY SUPPORT ACT

Robert E. Oliphant[†]

I. INTRODUCTION	991
II. BACKGROUND AND HISTORY	994
A. <i>Historical Development of UIFSA</i>	995
B. <i>The Federal Government Moves Aggressively into the Support Arena</i>	999
C. <i>The U.S. Commission on Interstate Child Support</i>	1001
D. <i>Minnesota's Legislature Acts to Adopt and Implement UIFSA</i>	1005
III. SUMMARIZING UIFSA'S MOST IMPORTANT FEATURES	1009
IV. ANALYSIS OF THE UNIFORM INTERSTATE FAMILY SUPPORT ACT	1015
A. <i>General Provisions</i>	1015
1. <i>Section 518C.101: Definitions</i>	1015
2. <i>Section 518C.102: Tribunal of This State</i>	1020
3. <i>Section 518C.103: Remedies Cumulative</i>	1020
B. <i>Jurisdiction</i>	1020
1. <i>Section 518C.201: Bases for Jurisdiction Over Nonresident</i>	1020
2. <i>Section 518C.202: Procedure When Exercising Jurisdiction over Nonresident</i>	1028
3. <i>Section 518C.203: Initiating and Responding Tribunal of This State</i>	1029
4. <i>Section 518C.204: Simultaneous Proceedings in Another State</i>	1030
5. <i>Section 518C.205: Continuing, Exclusive Jurisdiction</i>	1030
6. <i>Section 518C.206: Enforcement and Modification of Support Order by Tribunal Having Continuing Jurisdiction</i>	

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	1032
7. Section 518C.207: Recognition of Child Support Orders	1033
8. Section 518C.208: Multiple Child Support Orders for Two or More Obligees	1035
9. Section 518C.209: Credit for Payments	1035
C. Civil Provisions of General Application	1036
1. Section 518C.301: Proceedings Under This Chapter	1036
2. Section 518C.302: Action by Minor Parent	1037
3. Section 518C.303: Application of Law of This State	1037
4. Section 518C.304: Duties of Initiating Tribunal	1038
5. Section 518C.305: Duties and Powers of Responding Tribunal	1038
6. Section 518C.306: Inappropriate Tribunal	1041
7. Section 518C.307: Duties of Support Enforcement Agency	1042
8. Section 518C.308: Duty of Attorney General	1043
9. Section 518C.309: Private Counsel	1044
10. Section 518C.310: Duties of State Information Agency	1044
11. Section 518C.311: Pleadings and Accompanying Documents	1045
12. Section 518C.312: Nondisclosure of Information in Exceptional Circumstance	1046
13. Section 518C.313: Costs and Fees	1046
14. Section 518C.314: Limited Immunity of Petitioner	1047
15. Section 518C.315: Nonparentage as Defense	1048
16. Section 518C.316: Special Rules of Evidence and Procedure	1048
17. Section 518C.317: Communications Between Tribunals	1052
18. Section 518C.318: Assistance with Discovery	1052
19. Section 518C.319: Receipt and Disbursement of Payments	1052
D. Section 518C.401: Petition to Establish Support Order	1053
E. Direct Enforcement of Order of Another State Without Registration	1054
1. Section 518C.501: Recognition of Income-With-	

	<i>holding Order of Another State</i>	1054
2.	<i>Section 518C.502: Administrative Enforcement of Orders</i>	1055
F.	<i>Enforcement and Modification of Support Order After Registration</i>	1056
1.	<i>Section 518C.601: Registration of Order for Enforcement</i>	1056
2.	<i>Section 518C.602: Procedure to Register Order for Enforcement</i>	1057
3.	<i>Section 518C.603: Effect of Registration for Enforcement</i>	1058
4.	<i>Section 518C.604: Choice of Law</i>	1059
5.	<i>Section 518C.605: Notice of Registration of Order</i>	1060
6.	<i>Section 518C.606: Procedure to Contest Validity or Enforcement of Registered Order</i>	1061
7.	<i>Section 518C.607: Contest of Registration or Enforcement</i>	1062
8.	<i>Section 518C.608: Confirmed Order</i>	1063
9.	<i>Section 518C.609: Procedure to Register Child Support Order of Another State for Modification</i>	1063
10.	<i>Section 518C.610: Effect of Registration for Modification</i>	1064
11.	<i>Section 518C.611: Modification of Child Support Order of Another State</i>	1065
12.	<i>Section 518C.612: Recognition of Order Modified in Another State</i>	1069
G.	<i>Section 518C.701: Proceeding to Determine Parentage</i>	1070
H.	<i>Interstate Rendition</i>	1072
1.	<i>Section 518C.801: Grounds for Rendition</i>	1072
2.	<i>Section 518C.802: Conditions of Rendition</i>	1073
I.	<i>Section 518C.901: Uniformity of Application and Construction</i>	1074
V.	<i>FEDERAL INTERVENTION</i>	1074
VI.	<i>CONCLUSION</i>	1078

I. INTRODUCTION

During its 1994 session, the Minnesota Legislature enacted the Uniform Interstate Family Support Act (UIFSA),¹ a sweeping

1. Uniform Interstate Family Support Act, ch. 630, 1994 Minn. Laws 1815 (codified at MINN. STAT. ch. 518C (1994)).

piece of legislation intended to remedy the tragic situation of the more than 200,000 Minnesota children caught up in a feeble, inept child support collection system.² The Act recognizes the need to assist the rapidly escalating number of female-headed families who, because of little or no financial support, are moving into poverty.³

The Act limits its application to problems associated with establishing, enforcing, and modifying child support in the interstate context.⁴ In some areas, the Act goes much further than its predecessor, the Revised Uniform Reciprocal Enforcement of Support Act (RURESA).⁵

In its model form, UIFSA was endorsed by the National Conference of Commissioners on Uniform State Laws,⁶ the

2. According to the Minnesota Attorney General, 57% of Minnesota's noncustodial parents are behind in their child support payments, owing \$551 million in back child support. Patricia L. Baden, *Statewide Ads Aim to Change Attitudes About Child Support*, STAR TRIB. (Minneapolis), July 7, 1995, at B1.

Estimates of Minnesota children who received support in the interstate context could not be located by the author. Nationally, however, about three in 10 child support cases are interstate. U.S. COMMISSION ON INTERSTATE CHILD SUPPORT, SUPPORT OUR CHILDREN: A BLUEPRINT FOR REFORM at xii (1992) [hereinafter BLUEPRINT FOR REFORM].

3. The U.S. Census Bureau reports that if a child is living with just one parent, and that parent is the mother, there is virtually a one-in-three chance that the child and mother will be poor. GORDON H. LESTER, U.S. DEP'T OF COMMERCE, CURRENT POPULATION REPORTS, CONSUMER INCOME, SERIES P-60, NO. 173, CHILD SUPPORT AND ALIMONY: 1989 at 1-2 (1991). If the child's mother was never married, the likelihood that the child and mother will be poor is one-in-two. *Id.*

For the year ending June 1990, over 1,088,000 births, about one fourth of all births (4,179,000), were to unmarried women. BLUEPRINT FOR REFORM, *supra* note 2, at 120. In contrast, thirty years ago "it was estimated that one child in 10 was born to an unmarried mother. *Id.* In 1991, estimates are that 56% of black children, 23.2% of Hispanic children, and 17.2% of white children were born to unmarried women. *Id.* In 1991, 67.8% of all births to women ages 15-19 were to unmarried women. *Id.*

4. MINN. STAT. § 518C.901 (1994) (providing that the Act is to be construed to "effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it."). The states that have adopted the Uniform Interstate Family Support Act are Arizona, Arkansas, Colorado, Delaware, Idaho, Maine, Minnesota, Montana, Nebraska, New Mexico, Oklahoma, Oregon, South Dakota, Texas, Virginia, Washington, and Wisconsin. MINN. STAT. ANN. § 518C (West 1995).

5. For example, UIFSA provides for an interstate action to determine parentage and establish appropriate support in the interstate context. See *infra* part IIA for a discussion of the UIFSA predecessors.

6. UIFSA was endorsed by the National Conference of Commissioners on Uniform State Laws at its annual conference held in San Francisco, California, July 30 to August 6, 1992. UNIF. INTERSTATE FAMILY SUPPORT ACT, Historical Notes, 9 U.L.A. 121 (Supp. 1994).

American Bar Association,⁷ and the United States Commission on Interstate Child Support.⁸

Given these powerful endorsements, it is little wonder that the Minnesota Legislature neither seriously debated nor long considered the provisions of the Act during its spring 1994 session.⁹ It also explains the absence in the legislative record of discussion about existing Minnesota law, individual liberty, and privacy that are implicated in the Act.¹⁰

Close inspection of the Act, however, leads one to ask whether this well-meaning piece of legislation has gone too far. Is its draconian means justified by its collection ends? In the macro sense, is the Act a by-product of the perceptible drift of a society willing to sacrifice fundamental legal principles and processes that protect individuals from arbitrary decision making for the chance to curb a major societal predicament?

The Act was not passed in isolation; the child support problem has triggered other related measures. For example, the use of administrative judges in child support litigation, viewed as cheaper and more efficient than the traditional article judicial model, has been increased during every legislative session over the past several years.¹¹ Also, nonlawyers now may prosecute

7. UIFSA was endorsed at an American Bar Association meeting on February 9, 1993. Linda D. Elrod, *Summary of the Year in Family Law*, 27 FAM. L.Q. 485, 490 (1994).

8. BLUEPRINT FOR REFORM, *supra* note 2, at 232. The U.S. Commission on Interstate Child Support was established by Congress in 1988 to address the problem of interstate child support. *Id.* at 3. When the Commission issued its 1992 comprehensive report on the child support fiasco, it incorporated and endorsed virtually all of the earlier recommendations made by the National Conference of Commissioners on Uniform State Laws. *Id.* at 231-32, 236.

9. See *Hearings on Minn. S.F. 1662 Before the Senate Comm. on Family Services, Before the Subcomm. on Family Law of the Senate Judiciary Comm., Before the Senate Judiciary Comm.; and Hearings on Minn. H.F. 1792 Before the House Judiciary Comm.*, 78th Legislative Sess. (1994) [hereinafter *Hearings*] (audio tape).

10. See *id.*

11. In 1985, the federal government passed legislation requiring that states establish an expedited procedure to hear and decide child support matters. ROBERT E. OLIPHANT, MINNESOTA FAMILY LAW PRIMER § 21.1 (4th ed. 1992). See 45 C.F.R. § 303.101 (1993). If state judicial machinery was meeting support requirements, however, a state could request exemption from the expedited processes. OLIPHANT, *supra*, § 21.1. "Minnesota received a three-year exemption from the expedited process because a Minnesota Department of Human Services 1985 survey showed all counties were in compliance with the requirements." *Id.* A survey conducted in 1988, however, found 17 counties were not in compliance. *Id.*

In 1987, the Minnesota Legislature initiated a child support pilot project in Dakota County that used administrative law judges rather than district court judges to hear

child support cases in administrative courts.¹² Other legislative efforts have appeared; however, in some instances, they are without direction or clarity.¹³

This article provides an analysis of the new Act along with a discussion of the implications that certain provisions may have on individual liberty. Examples are provided that might prove helpful, especially where the Act makes major changes in existing law. An effort has been made to point out the major differences between the new Act and RURESA.

Part II reviews the background and history of the Act. Part III summarizes UIFSA's most important features. Part IV provides a comprehensive analysis of each section of the statute, and Part V takes a look at the future of UIFSA.

II. BACKGROUND AND HISTORY

Minnesota's version of UIFSA is based on the model act promulgated in 1992 by the National Conference of Commissioners on Uniform State Laws.¹⁴ UIFSA replaces Minnesota's Revised Uniform Reciprocal Enforcement of Support Act (RURESA).¹⁵

UIFSA's purpose is to make the collection of child support

child and medical support matters. *Id.* See MINN. STAT. § 518.551, subd. 10 (Supp. 1987). The purpose of the project was to evaluate the efficiency of the administrative process. OLIPHANT, *supra*, § 21.1. The project was limited to disputes in which Dakota County was a party and was to end June 30, 1989. *Id.* At the end of the two-year test period, the results from Dakota County were deemed so successful that the 1989 legislature provided authority to the Commissioner of Human Services to designate other counties for participation in the project. *Id.* See MINN. STAT. § 518.551, subd. 10 (Supp. 1989). The project was then expanded to 17 counties. OLIPHANT, *supra*, § 21.1. Counties designated by the Commissioner of Human Services were Becker, Beltrami, Carver, Cass, Clay, Dakota, Lac Qui Parle, Lincoln, Mille Lacs, Mower, Nicollet, Pipestone, Polk, Rock, Scott, Stearns, and Winona. *Id.* § 21.2 n.3. In 1993, it was estimated that about 40 counties were designated. *Id.* § 21.2.

12. See MINN. STAT. § 518.5511, subd. 5 (1994).

13. For example, Minnesota Statutes Section 518.11 has added confusion to the question of personal service because it is unclear why the new section was added or what was intended. The statute is subject to a variety of interpretations. See *infra* note 130 and accompanying text.

14. UIFSA was drafted, approved, and recommended for enactment in all the states by the National Conference of Commissioners on Uniform State Laws. UNIF. INTERSTATE FAMILY SUPPORT ACT, Historical Notes, 9 U.L.A. 121 (Supp. 1994).

15. See Revised Uniform Reciprocal Enforcement of Support Act, ch. 436, 1982 Minn. Laws 391 [hereinafter RURESA], *repealed by* Uniform Interstate Family Support Act, ch. 630, art. 9, § 4, 1994 Minn. Laws 1815, 1837.

faster and more efficient in the interstate context.¹⁶ In attempting to achieve this objective, the Act does a number of things. In conjunction with Minnesota Statutes Section 518.5511,¹⁷ the Act broadly defines who may enforce or modify support orders and who may determine parentage.¹⁸ It also contains a long-arm statute for use in interstate support and parentage actions.¹⁹ Proponents of the long-arm provisions contend that such provisions make the initiation of a child support case easier; provide greater access to information about the status of the case to those people most affected; and establish, at any given time, a single state that can obtain continuing and exclusive jurisdiction over the child support award.²⁰

The Act also contains special evidentiary provisions,²¹ discovery sections,²² and a provision that imposes a penalty on an obligor who asserts a Fifth Amendment self-incrimination defense during a UIFSA hearing.²³

Some believe that the Act will lead to the eventual demise of *Kulko v. Superior Court*.²⁴ Others believe that it is the cornerstone of the foundation for an eventual federal takeover of all child support enforcement.²⁵

A. Historical Development of UIFSA

When Congress passed the 1935 Social Security Act, it included a provision for furnishing funds to destitute mothers to help with the care of their dependent children.²⁶ The Act also

16. John J. Sampson & Paul M. Kurtz, *UIFSA: An Interstate Support Act for the 21st Century*, 27 FAM. L.Q. 85, 87 (1993).

17. MINN. STAT. § 518.5511 (1994) (providing rules on maintenance and support payments in all proceedings involving a child support award).

18. See *id.* §§ 518C.101(w), .102. Note that the legislature uses the word "tribunal" throughout the Act, defining it to include courts, administrative agencies, or quasi-judicial entities authorized to establish, enforce, or modify support orders or to determine parentage.

19. See *id.* § 518C.201.

20. See, e.g., Margaret C. Haynes, *Supporting Our Children: A Blueprint for Reform*, 27 FAM. L.Q. 7, 23 (1993).

21. See MINN. STAT. § 518C.316 (1994).

22. See *id.* §§ 518C.316, .318.

23. See *id.* § 518C.316(g).

24. See Haynes, *supra* note 20, at 23-24.

25. *Id.* at 22.

26. See 42 U.S.C. §§ 601-617 (1988). This form of assistance is referred to as Aid to Families with Dependent Children (AFDC). Social Security Amendments of 1967, Pub. L. No. 90-248, § 240(b), 81 Stat. 821, 911 (1967).

required a parent who was absent from the family home to pay child support.²⁷ It did not contain, however, an effective mechanism to ensure that an absent-from-the-home, financially sound parent would provide that support. Divorces in the 1930s were, of course, few, and the problems created by large numbers of children being born to out-of-wedlock mothers were almost nonexistent.²⁸

Following World War II, and for the next quarter century, the states and the federal government seemed baffled at their inability to effectively combat the nonsupport problem. By the 1980s the nonsupport problem had reached epidemic proportions; yet this should not have been a surprise. As early as 1950, it was clear that a major reason for nonsupport was parental absence—mostly on the part of fathers. Figures from 1950, for example, indicate that forty-nine percent of children receiving AFDC were eligible for such assistance because of parental absence from the home.²⁹

In 1950, in response to the growing need for assistance, Congress amended the Social Security Act to require that state welfare agencies notify appropriate law enforcement officials if a child receiving support under the AFDC program was abandoned or deserted by a parent.³⁰ Also in 1950, the National Conference of Commissioners on Uniform State Laws and the American Bar Association approved the model Uniform Reciprocal Enforcement of Support Act (URESA).³¹ Several states

27. See 42 U.S.C. § 652(a)(1) (1988).

28. In the United States, the number of divorces substantially increased from 385,000 in 1950 and 393,000 in 1960 to 708,000 in 1970 and 1,181,000 in 1979. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1982-83 at 82 (103d ed. 1982). "In 1963, 66.31% of all terminated marriages ended by death and 33.69% by divorce. By 1979 only 42.77% terminated by death, while 57.23% ended by dissolution." UNIF. MARITAL PROP. ACT, Prefatory Note, 9A U.L.A. 19 (1987). In 1981 there were 2,438,000 marriages and 1,219,000 divorces. *Id.* This "two to one ratio contrasts with 1930, when there were six marriages to every dissolution." *Id.*

29. OLIPHANT, *supra* note 11, § 29.1. Forty-nine percent of children receiving AFDC equaled 818,000 children. *Id.*

30. Joel F. Handler, *The Transformation of Aid to Families with Dependent Children: The Family Support Act in Historical Context*, 16 N.Y.U. REV. L. & SOC. CHANGE 457, 510 (1987-88).

31. UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT, Prefatory Note, 9B U.L.A. 556 (1987).

subsequently adopted some version of URESA.³² URESA was the first serious effort to bring uniformity and encourage cooperation among the various states in the child support area.³³

URES A provided a mechanism for establishing child support obligations and enforcing them across state lines without the necessity of a custodial parent traveling to a distant forum.³⁴ Either the custodial parent or the state, on behalf of the child and custodial parent, filed a support petition in the initiating state, usually the state where the custodian and child lived.³⁵ The petition was then forwarded to the responding state, ordinarily the state where the noncustodial parent resided or owned property.³⁶ A county attorney in the responding state appeared on behalf of the custodial parent at a hearing on the petition.³⁷ The obligor also was present.³⁸ If, after the hearing, the responding tribunal found a support duty under its laws and determined that the obligor had the ability to pay, a support order was entered.³⁹ Payments made by the obligor pursuant to the order were forwarded to the initiating state for distribu-

32. See, e.g., ALA. CODE §§ 30-4-80 to -98 (1989); ALASKA STAT. §§ 25.25.010-270 (1991); CONN. GEN. STAT. ANN. §§ 46b-180 to -211 (West 1986 & Supp. 1994); DEL. CODE ANN. tit. 13, §§ 601-640 (1993); D.C. CODE ANN. §§ 30-301 to -326 (1981 & Supp. 1994); GUAM CIV. PROC. CODE §§ 1500-1531 (1970); IND. CODE ANN. §§ 31-2-1-1 to -39 (West 1979 & Supp. 1994); MD. CODE ANN., FAM. LAW §§ 10-301 to -340 (1991 & Supp. 1994); MASS. GEN. LAWS ANN. ch. 273A, §§ 1-17 (West 1990 & Supp. 1994); MISS. CODE ANN. §§ 93-11-1 to -73 (1994); MO. ANN. STAT. §§ 454.010-360 (Vernon 1986 & Supp. 1995); N.Y. DOM. REL. LAW §§ 30-43 (McKinney 1988 & Supp. 1994); P.R. LAWS ANN. tit. 32, §§ 3311-3313v (1968 & Supp. 1990); TENN. CODE ANN. §§ 36-5-201 to -229 (1991 & Supp. 1994); UTAH CODE ANN. §§ 77-31-1 to -39 (1990 & Supp. 1994); V.I. CODE ANN., tit. 16, §§ 391-429 (1964); WASH. REV. CODE ANN. §§ 26.21.010-910 (West 1986 & Supp. 1995).

33. In 1909 and 1910, the Commissioners on Uniform State Laws proposed and adopted the Uniform Desertion and Non-Support Act (UDNA). UNIF. RECIPROCAL ENFORCEMENT OF SUPPORT ACT, Prefatory Note, 9B U.L.A. 556 (1987). UDNA made it a crime "for a husband to desert or willfully neglect or refuse to provide for the support and maintenance of his wife in destitute or necessitous circumstances or for a parent to fail in the same duty to his child under sixteen years of age." *Id.* UDNA applied only to males. *Id.* The drawback to UDNA was its lack of civil remedies and its inability to address interstate cases. *Id.*

34. BLUEPRINT FOR REFORM, *supra* note 2, at 228.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

tion to the custodial parent.⁴⁰

Despite the advent of URESA, the problem of no or inadequate child support continued to rage like an out-of-control forest fire, and Congress continued to address the problem. Legislation was passed allowing a state or local welfare agency to obtain the address and place of employment of an absent parent who owed child support under an existing court order from the files of the Department of Health, Education, and Welfare.⁴¹ Another provision gave states access to Internal Revenue Service (IRS) records so that addresses of absent parents owing support could be located.⁴²

In 1968, the National Conference of Commissioners on Uniform State Laws approved a new version of URESA.⁴³ Because the new version contained so many changes, it was labeled the Revised Uniform Reciprocal Enforcement of Support Act (RURESA).⁴⁴ Despite these efforts, the nonsupport problem continued.

Adding to the conflagration was the advent of no-fault divorce in the early 1970s, which triggered a huge unanticipated leap in the number of divorces between couples with children.⁴⁵ By 1974, the number of children receiving AFDC because of an absent parent made up 78% of the total AFDC paid out by the federal government.⁴⁶ Of those receiving AFDC, only 26.4% were covered by court orders or voluntary legal agreements for child support.⁴⁷ Of those with child support orders, only 21% received the judicially mandated amount.⁴⁸ In other words, the obligors, mostly fathers, were not paying their fair share of support. Moreover, the state child support enforcement system

40. *Id.*

41. See Social Security Amendments of 1965, Pub. L. No. 89-97, § 340, 79 Stat. 286, 411 (1965) (codified at 42 U.S.C. § 1306 (1988)).

42. See Social Security Amendments of 1967, Pub. L. No. 90-248, § 211(b), 81 Stat. 821, 897 (1968) (codified at 42 U.S.C. § 610 (1988)).

43. BLUEPRINT FOR REFORM, *supra* note 2, at 228.

44. *Id.*

45. See *supra* note 28.

46. OLIPHANT, *supra* note 11, § 29.1. The number 6,062,000 represents the total number of children receiving AFDC. *Id.*

47. *Id.*

48. *Id.* (citing *Child Support and the Work Bonus: Hearings on S. Res. 1842, 2081 Before the Senate Finance Comm.*, 93rd Cong., 1st Sess. (1973); Mary F. Bernet, *The Child Support Provisions: Comments on the New Federal Laws*, in *THE YOUNGEST MINORITY II* 491 (Sanford N. Katz ed., 1977)).

was failing in its role of identifying the fathers and in ordering and enforcing support obligations.

Despite the dismal record of support enforcement compiled by the states, most states adopted some form of RURESA or its equivalent.⁴⁹ RURESA, like its predecessor URESA, provided a means for a custodial spouse to initiate in a court in his or her own jurisdiction a petition for determination of a support award or for enforcement of a prior support order. Still, there was little relief in the nonsupport arena.

B. The Federal Government Moves Aggressively into the Support Arena

While Minnesota and other states struggled in the 1960s and into the 1970s with the mounting child support collection problem, the federal government, which had always viewed the support issue as local in nature,⁵⁰ began to change its perspective. For example, in 1975, Congress added Title IV-D to the Social Security Act.⁵¹ Title IV-D mandates that every state operate a child support enforcement program providing free

49. RURESA was adopted in the following states: FLA. STAT. ANN. §§ 88.011-.371 (West 1987); GA. CODE ANN. §§ 19-11-40 to -81 (1991 & Supp. 1994); HAW. REV. STAT. §§ 576-1 to -42 (1993); IDAHO CODE §§ 7-1048 to -1089 (1990 & Supp. 1994); ILL. ANN. STAT. ch. 750, ¶¶ 20/1-20/42 (Smith-Hurd 1993 & Supp. 1994); IOWA CODE §§ 252A.1-.25 (1994); KAN. STAT. ANN. §§ 23-451 to -491 (1988); KY. REV. STAT. ANN. §§ 407.010-.480 (Michie/Bobbs-Merrill 1984 & Supp. 1990); LA. REV. STAT. ANN. §§ 13:1641-.1698 (West 1991 & Supp. 1995), §§ 13:1641-.1644, *repealed by* 1993 La. Acts 442, § 3, eff. June 9, 1993; ME. REV. STAT. ANN. tit. 19, §§ 331-420 (West 1981 & Supp. 1993); MICH. COMP. LAWS ANN. §§ 780.151-.174 (West 1982 & Supp. 1994); MINN. STAT. §§ 518C.01-.36 (1992), *repealed by* Uniform Interstate Family Support Act, ch. 630, art. 9, § 4, 1994 Minn. Laws 1815, 1837; MONT. CODE ANN. §§ 40-5-101 to -199 (1993); NEB. REV. STAT. §§ 42-762 to -7104 (1988); N.H. REV. STAT. ANN. §§ 546:1-.41 (1974 & Supp. 1994); N.J. STAT. ANN. §§ 2A:4-30.24 to -30.64 (West 1987 & Supp. 1994); N.M. STAT. ANN. §§ 40-6-1 to -41 (Michie 1994); N.C. GEN. STAT. §§ 52A-1 to -32 (1994); N.D. CENT. CODE §§ 14-12.1-01 to -43 (1991 & Supp. 1993); OHIO REV. CODE ANN. §§ 3115.01-.34 (Anderson 1989 & Supp. 1994); OKLA. STAT. ANN. tit. 43, §§ 301-344 (West 1990); OR. REV. STAT. §§ 110.005-.291 (1989); 23 PA. CONS. STAT. ANN. §§ 4501-4540 (1991 & Supp. 1994); R.I. GEN. LAWS §§ 15-11-1 to -42 (1988 & Supp. 1994); S.C. CODE ANN. §§ 20-7-960 to -1170 (Law. Co-op. 1985); S.D. CODIFIED LAWS ANN. §§ 25-9A-1 to -43 (1992); TEX. FAM. CODE ANN. §§ 21.01-.66 (West 1986 & Supp. 1995); VT. STAT. ANN. tit. 15, §§ 385-428 (1989 & Supp. 1994); VA. CODE ANN. §§ 20-88.12 to -88.31 (Michie 1990); W. VA. CODE §§ 48A-7-1 to -41 (1992); WIS. STAT. ANN. § 767.65 (West 1993); WYO. STAT. §§ 20-4-101 to -138 (1994).

50. Margaret C. Haynes, *Child Support and the Courts in the Year 2000*, 17 AM. J. TRIAL ADVOC. 693, 693 (1994).

51. *Id.* See Social Services Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337, 2351 (1975) (codified in part at 42 U.S.C. §§ 651-655 (1988)).

child support enforcement services to recipients of AFDC and Medicaid or lose federal funding.⁵² By 1980, every state, territory, and the District of Columbia had a child support enforcement agency in place.⁵³

A mechanism to intercept tax refunds at the federal level became available in 1981⁵⁴ and was strengthened in 1984.⁵⁵ In 1984, 1986, and 1988, Congress passed a series of measures aimed at encouraging uniformity in the collection area. For example, states were required (1) to allow paternity to be established at any time prior to a child's eighteenth birthday;⁵⁶ (2) except in unusual circumstances, to set child support awards pursuant to a state child support guideline;⁵⁷ (3) to process cases expeditiously through quasi-judicial or administrative processes;⁵⁸ (4) to enforce support orders by withholding the ordered support from the obligated parent's wages before arrears accrued ("immediate wage withholding");⁵⁹ and (5) to collect arrearage by withholding state income tax refunds,⁶⁰ the imposition of liens on real and personal property,⁶¹ and garnishment.⁶² States that refused to follow federal mandates risked loss of federal funds.⁶³

Congress established a federal Parent Locator Service, which

52. Charlotte L. Allen, *Federalization of Child Support: Twenty Years and Counting*, 73 MICH. B.J. 660, 660 (1994).

53. *Id.* The Minnesota Office of Child Support Enforcement is located in the Department of Human Services. A child support (Title IV-D) office is located in each of the 87 Minnesota counties.

54. See Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, tit. XXIII, ch. 2, § 2331, 95 Stat. 357, 860 (1981) (codified as amended at 26 U.S.C. § 6402(c) (1994), 42 U.S.C. § 664 (1988)).

55. See Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, § 21, 98 Stat. 1305, 1322 (1984) (codified as amended at 26 U.S.C. § 6402(c) (1994), 42 U.S.C. § 664 (1988)).

56. Diane Dodson & Robert M. Horowitz, *Child Support Enforcement Amendments of 1984; New Tools for Enforcement*, 10 Fam. L. Rep. (BNA) No. 50, at 3051, 3060 (Oct. 23, 1984). See also 42 U.S.C. § 666 (1988) (listing these and several other required state laws).

57. Dodson & Horowitz, *supra* note 56, at 3059.

58. *Id.* at 3058.

59. *Id.* at 3051-52.

60. *Id.* at 3057.

61. *Id.* at 3055-57.

62. *Id.* at 3051.

63. *Id.*

was used to track down delinquent obligors.⁶⁴ Congress also authorized the IRS to intercept federal tax returns to pay off child support arrears and to use its collection resources in particularly difficult cases.⁶⁵

In response to federal pressure, Minnesota passed an arsenal of collection laws including income withholding,⁶⁶ garnishment,⁶⁷ contempt of court,⁶⁸ tax refund interception,⁶⁹ liens,⁷⁰ and security bonds.⁷¹ New administrative procedures were created⁷² and special statutes like the Uniform Enforcement of Foreign Judgments Act⁷³ were adopted. The nonsupport problem, however, continued.

C. *The U.S. Commission on Interstate Child Support*

By the late 1980s, there was nationwide frustration over the inability of parents to support their children following divorce or to support those born out-of-wedlock. Baffled by the states' failure to effectively remedy the problem, Congress decided to aggressively attack the problem. In 1988, as a part of the Family Support Act, Congress established the U.S. Commission on Interstate Child Support.⁷⁴ The Commission was charged with investigating and making recommendations to Congress on the interstate aspects of child support.⁷⁵ After more than three

64. See Social Services Amendments of 1974, Pub. L. No. 93-647, § 453, 88 Stat. 2337, 2353 (1974) (codified as amended at 42 U.S.C. § 653 (1988)). The Parent Locator Service is used to "obtain and transmit to any authorized person . . . information as to the whereabouts of any absent parent when such information is to be used to locate such parent for the purpose of enforcing support obligations against such parent." *Id.* § 653(a). The state works in conjunction with the Department of Health and Human Services, which can search federal agency records. *Id.* § 653(b). The Department of Health and Human Services can pass along any information that does not endanger national security. *Id.* § 653(e).

65. See *id.* § 652(b).

66. See MINN. STAT. § 518.611 (1994).

67. See *id.* § 518.611, subd. 1.

68. See *id.* § 518.615.

69. See *id.* § 518.551.

70. See *id.* § 518.57.

71. See *id.* § 257.66.

72. See *id.* § 548.26.

73. Uniform Enforcement of Foreign Judgments Act, ch. 51, 1977 Minn. Laws 95 (codified at MINN. STAT. §§ 548.26-33 (1994)).

74. BLUEPRINT FOR REFORM, *supra* note 2, at 3. See Family Support Act of 1988, Pub. L. No. 100-485, § 126, 102 Stat. 2343, 2354 (codified at 42 U.S.C. § 666 (1988)).

75. BLUEPRINT FOR REFORM, *supra* note 2, at 3.

years of work, the Commission issued its report in 1992.⁷⁶

The report painted a bleak picture of parental nonsupport in America. The Commission had found both unexplained long delays when one state asked another to establish child support under URESA and confusion over states' record keeping.⁷⁷

Responding states estimated that it took an average of eight months to establish paternity and four months to establish support in an interstate dispute.⁷⁸ Initiating states disagreed, claiming that responding states took eleven months to establish paternity and eight months to establish support.⁷⁹

Child support caseworkers and custodial parents testified before the Commission to a lack of cooperation and communication between states.⁸⁰ They reported that responding states often refused to talk with parents who called the enforcement offices directly about the status of their support request.⁸¹ The parents testified that they were told to get information from the initiating state.⁸² Caseworkers testified that if they were in an initiating state they often were not allowed to speak with the attorney in the responding state who was to prosecute the case.⁸³ Responding states complained that initiating states failed to timely assist them with discovery requests or provide notice of hearing dates to the petitioner.⁸⁴

The Commission also reported that most states were not consistent in their support enforcement practices or procedures. For example, the Commission found that in most states, despite a petition seeking enforcement of an existing order, the responding court proceeded *de novo*, apparently giving the petition little or no weight.⁸⁵ The Commission found that responding courts applied their own support guidelines to the parties' financial circumstances, not those of the initiating state where the child lived.⁸⁶ Consequently, a final child support

76. *Id.* at 231.

77. *Id.* at 229.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* at 229-30.

84. *Id.* at 230.

85. *Id.*

86. *Id.*

order might be for a support amount that was the same, higher, or lower than the amount that the obligee would have received were the action in the initiating state where the minor child lived.⁸⁷

The Commission found that even the process surrounding registration of a support order was filled with confusion. The confusion arose when an obligee sought enforcement through registration of a support order and the registering tribunal registered the order "intact."⁸⁸ As a result, identical orders existed in the registering state and in the original rendering state.⁸⁹ However, under the 1968 version of URESA, which authorized states to prospectively modify a registered order, courts allowed the underlying order to be modified.⁹⁰ Consequently, an obligee who registered a support order in a state for enforcement risked "losing" the terms of the original order.⁹¹

The Commission was persuaded that URESA, which was last revised in 1968, had fallen badly out of date.⁹² Witnesses argued that URESA no longer reflected the transformation that child support had undergone since the enactment in 1975 of Title IV-D of the Social Security Act.⁹³

The Commission was told that Title IV-D had a profound but uneven effect on the processing of URESA cases.⁹⁴ Some states no longer provided the out-of-state petitioner with a government attorney unless the case was Title IV-D because it was believed that IV-D status was necessary for the state to receive Federal Financial Participation for the attorney's salary and incentives based on the support collections.⁹⁵

The emergence of Title IV-D had at times created a confusing bureaucracy for processing URESA cases.⁹⁶ For example, in some states one governmental agency processed URESA cases involving IV-D AFDC custodial parents, another agency processed URESA cases involving IV-D non-AFDC

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* See *supra* notes 51-53 and accompanying text for a discussion of Title IV-D.

94. BLUEPRINT FOR REFORM, *supra* note 2, at 230.

95. *Id.*

96. *Id.*

custodial parents, and the clerk of court's office processed non-IV-D URESA cases.⁹⁷ Procedures varied not only from state to state but also from county to county within a state.⁹⁸

Commission witnesses also testified that URESA was in some instances overused.⁹⁹ In 1950, when URESA was first approved, it was one of the few remedies available to enforce child support across state lines.¹⁰⁰ Now, however, a number of remedies to seek support existed, some of which were more efficient than URESA.¹⁰¹

The Commission believed that the major limitation of URESA was the result of its being a "uniform act."¹⁰² Because it was a uniform act, states had the discretion whether to enact all or only portions of it.¹⁰³ Although URESA had been enacted in every state and American territory, in the District of Columbia, and in the Commonwealth of Puerto Rico, problems arose because each jurisdiction passed a different version.¹⁰⁴ For example, some states had a 1958 version, a majority had the 1968 version, and other states had bits and pieces of each URESA version.¹⁰⁵ States such as Iowa, New York, and Ohio had enacted a form of URESA that is known as the Uniform Support of Dependents Law.¹⁰⁶ The lack of uniformity made it difficult to know what to expect when a URESA petition was forwarded to a responding state.¹⁰⁷

In 1988, the U.S. Commission on Interstate Child Support established a drafting committee to revise child support legislation.¹⁰⁸ Members of the National Conference of Commissioners on Uniform State Laws participated in almost every drafting committee meeting.¹⁰⁹ After three and a half years of deliberations, the Commission reported to Congress.¹¹⁰ In its report,

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* at 231.

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

the Commission recommended adoption of the Uniform Interstate Family Support Act, as promulgated in 1992 by the National Conference of Commissioners on Uniform State Laws.¹¹¹ This message reached Minnesota, and the scene was set for legislative action.

D. Minnesota's Legislature Acts to Adopt and Implement UIFSA

Many factors influenced the Minnesota Legislature as it began its UIFSA deliberations. First, the U.S. Commission on Interstate Child Support had already issued an extensive report on interstate support.¹¹² Second, the National Conference of Commissioners on Uniform State Laws had unanimously voted to replace RURESA with UIFSA.¹¹³ Third, UIFSA had been approved by the American Bar Association at its meeting in Boston, Massachusetts, on February 9, 1993.¹¹⁴ Finally, eight states had already passed a UIFSA statute¹¹⁵ and eight other states and the District of Columbia were considering it.¹¹⁶

The Minnesota Legislature began hearings on UIFSA on March 8, 1994.¹¹⁷ From the day it was introduced until its final passage, there is little evidence that serious questions were raised regarding the Act.¹¹⁸ The legislature's political posture, as gleaned from audio tape recordings of hearings held on March 8, 14, 16, and 28, 1994, and from the discussion on the floor of the Senate, was to model Minnesota's UIFSA on the model act recommended by the National Conference of Commissioners on Uniform State Laws with as few changes as possible.¹¹⁹ The focus was on the need to obtain child support in the interstate context and on the need for nationwide uniformity.¹²⁰

Constitutional issues, especially relating to the jurisdictional

111. *Id.*

112. *See supra* part II.C.

113. *See supra* note 6.

114. *See supra* note 7.

115. UNIF. INTERSTATE FAMILY SUPPORT ACT, Table of Jurisdictions, 9 U.L.A. 121 (Supp. 1994) (listing Arizona, Arkansas, Colorado, Montana, Nebraska, Oregon, Texas, and Washington).

116. In addition to Minnesota, UIFSA was pending in California, Illinois, Kansas, Maryland, Massachusetts, New Mexico, South Dakota, and Wisconsin. Elrod, *supra* note 7, at 485 n.30. UIFSA has also been considered in the District of Columbia. *Id.*

117. *Hearings, supra* note 9.

118. *See id.*

119. *See id.*

120. *See id.*

section of the model act, were not addressed.¹²¹ Moreover, there is some evidence that legislators either misunderstood or were misled regarding the current position of the judiciary in the procedural due process area. For example, one spokesman for the bill suggested during the hearings that the proposal "takes advantage of some of the more recent United States Supreme Court cases on long-arm jurisdiction,"¹²² implying that there had been a change on the question of personal jurisdiction over obligors. However, little change had occurred in the personal jurisdiction arena at either the national¹²³ or state level.¹²⁴ There is sparse evidence that the legislators were aware of the conflict between UIFSA's language and existing Minnesota views on procedural due process in the interstate context.¹²⁵ UIFSA sailed through the Minnesota House and Senate and was signed into law without opposition.

Coincidental with the passage of UIFSA, the legislature strengthened the power of administrative judges to hear child support disputes.¹²⁶ The legislature declared that all proceedings for obtaining, modifying, or enforcing child and medical

121. *See id.*

122. *Id.* (audio tape statement of Bob Tenneson, Minnesota Uniform Law Commissioner, before the Senate Committee on Family Services).

123. *See, e.g.,* Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985) (applying long-arm statute to out-of-state franchises does not violate due process); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297-98 (1980) (holding that residents of New York who bought a car in New York could not sue car retailer in Oklahoma for injuries that occurred in Oklahoma); Kulko v. Superior Court, 436 U.S. 84, 94 (1978) (holding that sending daughter to live with mother in California is not purposefully availing self of state protections and does not create personal jurisdiction); Hanson v. Denckla, 357 U.S. 235, 253 (1958) (holding that Florida does not have in rem jurisdiction over trust created in Delaware even though grantor lived and died in Florida).

124. *See, e.g.,* Bjordahl v. Bjordahl, 308 N.W.2d 817, 819 (Minn. 1981) (indicating nonsupport is considered "an act outside the state causing injury or damage inside the state"; thus subjecting the obligor to the tort long-arm statute) (quoting MINN. STAT. § 543.19, subd. 1(d) (1980)); Ulmer v. O'Malley, 307 N.W.2d 775, 777 (Minn. 1981) (holding that personal jurisdiction does not exist where the defendant's only contact to the state was through his attorneys); Anderson v. Mikel Drilling Co., 257 Minn. 487, 496, 102 N.W.2d 293, 300 (1960) (holding that the authorization to accept service of process does not extend to actions for fraud); Thelen v. Thelen, 75 Minn. 433, 435, 78 N.W. 108, 109 (1899) (holding that a divorce cannot be granted in a state where neither party is domiciled or a resident); Wilkie v. Allied Vanlines, Inc. 398 N.W.2d 607, 610 (Minn. Ct. App. 1986) (holding that lack of contacts will eliminate use of long-arm statute).

125. *See Hearings, supra* note 9.

126. *See* MINN. STAT. § 518.5511 (1994).

support orders and for modifying maintenance orders if combined with a child support proceeding could be conducted by an administrative judge when the public authority is a party or provides services to a party or parties to the proceedings.¹²⁷ At the option of the county, the administrative process may include contempt motions or actions to establish parentage.¹²⁸ Furthermore, after August 1, 1994, all Minnesota counties are required to participate in the administrative process in accordance with a statewide implementation plan to be created by the Commissioner of Human Services.¹²⁹ The legislation continued the shift of child support matters away from Minnesota's constitutionally established judiciary toward legislatively created administrative judges.

Concurrent with the passage of UIFSA, the legislature amended Minnesota Statute Section 518.11. The new language provides for an alternative means of service of process in divorce actions.¹³⁰ The meaning of the language contained in the amendment is not clear. The amendment may, but probably does not, establish a substitute service of process procedure that gives Minnesota personal jurisdiction over defendants where personal service is impossible or impractical. It may be a veiled

127. *Id.* § 518.5511, subd. 1(b).

128. *Id.*

129. *Id.* § 518.5511, subd. 1(d).

130. The language added to Minnesota Statutes Section 518.11 reads as follows:

(c) If personal service cannot be made, the court may order service of the summons by alternate means. The application for alternate service must include the last known location of the respondent; the petitioner's most recent contacts with the respondent; the last known location of the respondent's employment; the names and locations of the respondent's parents, siblings, children, and other close relatives; the names and locations of other persons who are likely to know the respondent's whereabouts; and a description of efforts to locate those persons.

The court shall consider the length of time the respondent's location has been unknown, the likelihood that the respondent's location will become known, the nature of the relief sought, and the nature of efforts made to locate the respondent. The court shall order service by first class mail, forwarding address requested, to any addresses where there is a reasonable possibility that mail or information will be forwarded or communicated to the respondent.

The court may also order publication, within or without the state, but only if it might reasonably succeed in notifying the respondent of the proceeding. Also, the court may require the petitioner to make efforts to locate the respondent by telephone calls to appropriate persons. Service shall be deemed complete 21 days after mailing or 21 days after court-ordered publication.

MINN. STAT. § 518.11(c) (1994).

attempt to create personal jurisdiction in cases where a defendant's behavior impliedly creates a waiver to a court's exercise of personal jurisdiction.

There are several possible explanations for this amendment. For example, in *Dobkin v. Chapman*,¹³¹ the New York Court of Appeals upheld a court-ordered substitute service of process in three automobile accident cases.¹³² The defendants had been served by ordinary mail at their last known address and by publication in the local newspaper.¹³³ The court ruled that when the whereabouts of the defendants were unknown and service in the manner attempted was the best the plaintiffs could do under the circumstances, it would be unfair to plaintiffs and harmful to the public interest if the court insisted on actual notice or a high probability of actual notice.¹³⁴ The court placed the blame on the defendants, who had not furnished the plaintiffs with a correct address at the scene of the accident, as required by New York law, or had failed to leave a forwarding address.¹³⁵ An analogy in Minnesota could be made to cases where the parties to a dissolution or parentage action initially provided the court with their address and then move without notifying a party. The failure to notify, it can be argued, constituted a waiver. This analysis, however, is constitutionally problematic.

The amendment may also be a legislative reaction to *Peterson v. Eishen*,¹³⁶ where the court held that a ten-year-old paternity judgment was void because the summons and complaint were not served at Eishen's usual place of abode and Eishen did not submit to the jurisdiction of the court when he took a blood test.¹³⁷ In October 1974, the county attorney's office had sent a certified letter to Eishen at a North St. Paul address. Although the letter was returned marked "undeliverable," the county served a summons and complaint at the same address in 1982 because (1) Minnesota driver's license records showed Eishen lived at the North St. Paul address as of January 31, 1975; (2)

131. 236 N.E.2d 451 (N.Y. 1968).

132. *Dobkin v. Chapman*, 236 N.E.2d at 460.

133. *Id.* at 453-55.

134. *Id.* at 458.

135. *Id.* at 459.

136. 495 N.W.2d 223 (Minn. Ct. App. 1993), *aff'd*, 512 N.W.2d 338 (Minn. 1994).

137. *Peterson v. Eishen*, 495 N.W.2d at 226.

Minnesota Department of Revenue records listed the North St. Paul address as Eishen's residence as of March 30, 1981; and (3) an inquiry to the United States Post Office on June 11, 1982, indicated Eishen received mail at the North St. Paul address.¹³⁸ The court rejected the county's claim that it could rely on this information and that service of process was valid.¹³⁹ The ruling may have triggered the legislation.

Another possible explanation for the amended service of process provision can be found in the U.S. Commission on Interstate Child Support's Report to Congress. In the Report, the Commission urges that the address given by a party in a parentage or support case should be considered the presumed address of the party for the purpose of providing adequate notice.¹⁴⁰ The Commission also urges that the presumptive nature of the information and the consequences of not updating it should be made explicitly clear to the parties when they are before a tribunal.¹⁴¹

Finally, the amendment may simply be intended as an alternative to publication, which provides only limited jurisdiction in a dissolution matter. However, without a clear legislative record, one is left to speculate upon the true meaning of the amended service of process statute.

III. SUMMARIZING UIFSA'S MOST IMPORTANT FEATURES

UIFSA brings to Minnesota's interstate child support effort a major program with many new and innovative features. Before exploring each provision in detail, it may be helpful to provide an overview.

To help novices as well as experienced drafters, UIFSA contains a detailed outline of the requirements for drafting a petition.¹⁴² A petition to establish or modify a support order must be verified by the petitioner and provide information such as the names, addresses, social security numbers, sex of the obligor and obligee, and any other information which might assist in locating or identifying the respondent.¹⁴³ In excep-

138. *Id.* at 224.

139. *Id.* at 225-26.

140. BLUEPRINT FOR REFORM, *supra* note 2, at 95.

141. *Id.*

142. See MINN. STAT. § 518C.311(a) (1994).

143. *Id.*

tional circumstances, and upon a finding that the health or safety of a party or child would be put at risk with disclosure of such identifying information, the court may order nondisclosure of such information.¹⁴⁴

Access to the court system is guaranteed because a petitioner is not required to pay filing fees and costs.¹⁴⁵ If the petitioner prevails on his or her action, the obligor may be required to pay the fees.¹⁴⁶

Another provision prevents Minnesota from exercising its traditional jurisdictional authority over a nonresident obligor or obligee who visits the state. As a sovereign, Minnesota has followed the nineteenth century view of personal jurisdiction that gives a state personal jurisdiction over any individual served within its boundaries.¹⁴⁷ Under UIFSA, however, Minnesota gives immunity to a petitioner when participating in a UIFSA proceeding in the state.¹⁴⁸ Consequently, the petitioner's appearance at such a proceeding does not confer personal jurisdiction over the petitioner for another matter;¹⁴⁹ mere presence of the petitioner in Minnesota does not make the petitioner amenable to civil service of process while in the state.¹⁵⁰

UIFSA attempts to work out the problems associated with multistate conflict by providing that Minnesota may act as an initiating or responding tribunal even when more than two states are involved.¹⁵¹ If proceedings are initiated in Minnesota after similar proceedings are filed in another state, Minnesota can exercise jurisdiction only if the petition is filed in Minnesota before the expiration of time allowed to challenge jurisdiction in the other state; the contesting party timely challenges jurisdiction in the other state; and, if relevant, Minnesota is the home state of the child.¹⁵²

144. *Id.* § 518C.312.

145. *Id.* § 518C.313(a).

146. *Id.* § 518C.313(b).

147. OLIPHANT, *supra* note 11, § 23.31. See *Burnham v. Superior Court*, 495 U.S. 604, 612 (1990) (stating that the modern court's view of personal jurisdiction dates back to the nineteenth century).

148. See MINN. STAT. § 518C.314(a) (1994).

149. *Id.* § 518C.314(a).

150. *Id.* § 518C.314(b).

151. See *id.* § 518C.203.

152. *Id.* § 518C.204(a).

UIFSA also deals with the dilemma faced by a court in determining which order to recognize when multiple orders have been entered by a Minnesota court and a court of another state.¹⁵³ If only one order has been issued, then it must be recognized.¹⁵⁴ If two or more orders have been issued, then the one issued by the tribunal having continuing, exclusive jurisdiction prevails.¹⁵⁵ If more than one state has continuing, exclusive jurisdiction, then the order issued by the child's current home state must be recognized, or, if there is no order in the current home state, the most recent order must be recognized.¹⁵⁶ If no state has continuing, exclusive jurisdiction, then a Minnesota court can issue an order¹⁵⁷ and thereby gain continuing, exclusive jurisdiction.¹⁵⁸

Under UIFSA, it is no longer necessary to register an order or file a pleading with the Minnesota courts before a Minnesota employer must respond to an income-withholding order from another state.¹⁵⁹ This is viewed as a substantial improvement over RURESA, where the other state was required to send an order to the Minnesota Child Support Enforcement Unit, which then had to initiate a formal legal action to implement it.¹⁶⁰

However, merely because an out-of-state order can be summarily enforced does not mean that a child support order from another state cannot be registered in Minnesota for the purpose of enforcement¹⁶¹ or modification.¹⁶² The procedure for registering an order for enforcement is set out in detail in UIFSA.¹⁶³ Once registered, the order may be enforced as though it had been issued by a Minnesota court.¹⁶⁴ Once the order is registered, the registering tribunal must notify the nonregistering party of the registration,¹⁶⁵ the effect of the

153. *See id.* § 518C.207(a).

154. *Id.* § 518C.207(a)(1).

155. *Id.* § 518C.207(a)(2).

156. *Id.* § 518C.207(a)(3).

157. *Id.* § 518C.207(a)(4).

158. *Id.* § 518C.207(b).

159. *See id.* § 518C.501.

160. *See RURESA, supra* note 15 (formerly codified at MINN. STAT. § 518C.09 (1992)).

161. *See* MINN. STAT. § 518C.601 (1994).

162. *See id.* § 518C.609.

163. *See id.* § 518C.602.

164. *Id.* § 518C.603(b).

165. *Id.* § 518C.605(a).

registration,¹⁶⁶ and the procedure for contesting the registration.¹⁶⁷ An order may be registered for the purpose of modification in the same manner as for enforcement.¹⁶⁸

UIFSA insures that a minor with a child is not excluded from maintaining a proceeding on behalf of his or her child.¹⁶⁹

UIFSA also creates special rules of evidence designed to ease the burden of interstate litigation over child support.¹⁷⁰

Buried among the multitude of new support provisions in UIFSA is Minnesota's first family law long-arm statute.¹⁷¹ This provision is intended to give Minnesota courts personal jurisdiction over a nonresident that is as broad as constitutionally permitted.¹⁷² The UIFSA drafters did not confine the scope of the long-arm statute to merely child support disputes but included child support, spousal support, parentage proceedings, and maintenance and support modification actions.¹⁷³

Without a specific family law long-arm statute, Minnesota courts have struggled with the question of whether they possessed statutory authority to extend their jurisdictional power to out-of-state residents in certain types of support disputes. For example, in *Mahoney v. Mahoney*,¹⁷⁴ the court of appeals suggested that Minnesota did not have a long-arm statute for general use in dissolution matters.¹⁷⁵ The *Mahoney* decision is consistent with *Ferguson v. Ferguson*,¹⁷⁶ in which the court said that Minnesota did not have long-arm jurisdiction in child support modification matters.¹⁷⁷ The UIFSA long-arm provisions lays to rest any statutory questions raised by those decisions.

In those instances where long-arm jurisdiction cannot be obtained over a nonresident obligor, UIFSA creates a two-state support proceeding similar to RURESA.¹⁷⁸

166. *Id.* § 518C.605(b)(1).

167. *Id.* § 518C.605(b)(2).

168. *See id.* § 518C.609.

169. *See id.* § 518C.302.

170. *See id.* § 518C.316.

171. *See id.* § 518C.201.

172. UNIF. INTERSTATE FAMILY SUPPORT ACT § 201 cmt., 9 U.L.A. 132 (Supp. 1994).

173. *Id.*

174. 433 N.W.2d 115 (Minn. Ct. App. 1988).

175. *Mahoney v. Mahoney*, 433 N.W.2d at 118.

176. 411 N.W.2d 238 (Minn. 1987).

177. *Ferguson v. Ferguson*, 411 N.W.2d at 240.

178. UNIF. INTERSTATE FAMILY SUPPORT ACT § 301 cmt., 9 U.L.A. 139, 140 (Supp. 1994).

Portions of the UIFSA jurisdiction section have a theoretical platform that could extend state court jurisdiction over out-of-state citizens beyond the limitations imposed by the United States Supreme Court in *Kulko v. Superior Court*.¹⁷⁹ The theory is that Congress can delegate nationwide jurisdiction to the states.¹⁸⁰ Minnesota's UIFSA jurisdictional section contains all the language necessary for implementation of such a nationwide jurisdictional scheme should Congress choose to implement it sometime in the future.

The threat of future congressional action, however, is not the immediate concern. Rather, several jurisdictional provisions found in UIFSA raise troubling questions. When federal and state family law jurisdictional decisions are compared with some of the new UIFSA jurisdictional provisions, some thorny constitutional problems appear.¹⁸¹ The source for these problems is the eight jurisdictional long-arm provisions found in the model act and incorporated without change into Minnesota's version of UIFSA.¹⁸²

UIFSA contains special rules of evidence and assistance with discovery procedures.¹⁸³ In promulgating the evidentiary rules, the Minnesota Legislature appears to have accepted the view that interstate support disputes cannot be efficiently handled if Minnesota continued to rely on traditional common law rules of evidence. UIFSA contains what commentators to the model act characterize as "innovative methods for gathering evidence in interstate cases."¹⁸⁴

UIFSA expands the procedure for registration of a support order issued by another state.¹⁸⁵ Under RURESA, when a support order was received from another state, it was common practice to initiate a new suit to establish a support order.¹⁸⁶ This often led to differing support orders in separate jurisdic-

179. See *id.* § 201, 9 U.L.A. at 131; MINN. STAT. § 518C.201 (1994).

180. Haynes, *supra* note 20, at 23. Under such an expanded long-arm jurisdiction, the obligor would be financially liable in any state in which the obligor's child resided. *Id.* at 23-24.

181. See *infra* part IV.B.1 for a discussion of these issues.

182. See *infra* part IV.B.1.

183. See MINN. STAT. §§ 518C.316, .318 (1994).

184. UNIF. INTERSTATE FAMILY SUPPORT ACT § 316 cmt., 9 U.L.A. 151 (Supp. 1994).

185. See MINN. STAT. § 518C.401 (1994).

186. UNIF. INTERSTATE FAMILY SUPPORT ACT § 601 cmt., 9 U.L.A. 156 (Supp. 1994).

tions and legal questions about which order was enforceable.¹⁸⁷ UIFSA eliminates this multiple-state registration and modification problem by setting up a one-order system.¹⁸⁸ Under the one-order system, only an existing order can be enforced.¹⁸⁹

Under UIFSA, an existing order may be modified only if the conditions set out in Minnesota Statutes Section 518C.611(a) have been met.¹⁹⁰ All persons affected by the initial order must have moved from the issuing state.¹⁹¹ The petitioner for modification must also be a nonresident of the forum in which modification is sought,¹⁹² and the respondent must be subject to jurisdiction in that forum.¹⁹³ This provision contemplates that the issuing state has lost continuing, exclusive jurisdiction and that either the obligee or obligor may seek modification in the other's state of residence.¹⁹⁴ This provision seeks to achieve a "rough justice" between the parties by preventing a litigant from seeking modification in a court that will markedly disadvantage the other party.¹⁹⁵

The parties may terminate the issuing state's continuing jurisdiction by agreement.¹⁹⁶ The agreement must be initiated and confirmed by the issuing state, and a copy of the agreement must be filed with the issuing tribunal.¹⁹⁷

It should be noted that there are jurisdictional differences between a child support modification matter brought under UIFSA and one in which the federal Parental Kidnapping Prevention Act is invoked.¹⁹⁸ The federal Parental Kidnapping Prevention Act declares that the court which has continuing,

187. *Id.*

188. *Id.*

189. *Id.*

190. See MINN. STAT. § 518C.611 (1994).

191. *Id.* § 518C.611(a)(1)(i).

192. *Id.* § 518C.611(a)(1)(ii).

193. *Id.* § 518C.611(a)(1)(iii); see also *Scott v. Scott*, 492 N.W.2d 831, 833 (Minn. Ct. App. 1992).

194. UNIF. INTERSTATE FAMILY SUPPORT ACT § 611 cmt., 9 U.L.A. 163, 164 (Supp. 1994).

195. *Id.*

196. MINN. STAT. § 518C.611(a)(2) (1994).

197. UNIF. INTERSTATE FAMILY SUPPORT ACT § 611 cmt., 9 U.L.A. 163, 164 (Supp. 1994).

198. *Id.* at 164-65.

exclusive jurisdiction may “decline” jurisdiction.¹⁹⁹ The privilege of declining jurisdiction is not permitted under UIFSA.²⁰⁰

Minnesota may now use UIFSA to bring a parentage action in the interstate context.²⁰¹ Either the mother or father claiming parentage may bring such an action.²⁰² It need not be joined with a claim for support, although a parentage action normally seeks to establish a support order under UIFSA.²⁰³

UIFSA has many other features that in some respects make it a revolutionary statute. These features are examined in detail in the following sections. It should be noted that Minnesota courts have generally found uniform statutory schemes like UIFSA remedial in nature and have liberally construed them.²⁰⁴

IV. ANALYSIS OF THE UNIFORM INTERSTATE FAMILY SUPPORT ACT

A. *General Provisions*

1. *Section 518C.101: Definitions*

In this chapter:

- (a) “Child” means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual’s parent or who is or is alleged to be the beneficiary of a support order directed to the parent.
- (b) “Child support order” means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.
- (c) “Duty of support” means an obligation imposed or imposed by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

199. *Id.* See Parental Kidnapping Prevention Act of 1980, Pub. L. 96-611, §§ 6-10, 94 Stat. 3566, 3568-3573 (codified at 28 U.S.C. § 1738A (1988)). Similar provisions can be found in the Uniform Child Custody Jurisdiction Act. *Id.* See UNIF. CHILD CUSTODY JURISDICTION ACT § 14, 9 U.L.A. 292 (1988).

200. UNIF. INTERSTATE FAMILY SUPPORT ACT § 611 cmt., 9 U.L.A. 163, 164-65 (Supp. 1994).

201. See MINN. STAT. § 518C.701(a) (1994).

202. See *id.*

203. UNIF. INTERSTATE FAMILY SUPPORT ACT § 701 cmt., 9 U.L.A. 166 (Supp. 1994).

204. See *Illinois ex rel. Shannon v. Sterling*, 248 Minn. 266, 270, 80 N.W.2d 13, 16-17 (1956).

(d) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(e) "Income" includes earnings or other periodic entitlement to money from any source and any other property subject to withholding for support under the law of this state.

(f) "Income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor under section 518.611 or 518.613, to withhold support from the income of the obligor.

(g) "Initiating state" means a state in which a proceeding under this chapter or a law substantially similar to this chapter, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act is filed for forwarding to a responding state.

(h) "Initiating tribunal" means the authorized tribunal in an initiating state.

(i) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(j) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(k) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(l) "Obligee" means:

- (1) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

- (2) a state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

- (3) an individual seeking a judgment determining parentage of the individual's child.

(m) "Obligor" means an individual, or the estate of a decedent:

- (1) who owes or is alleged to owe a duty of support;

- (2) who is alleged but has not been adjudicated to be a

parent of a child; or

(3) who is liable under a support order.

(n) "Petition" means a petition or comparable pleading used pursuant to section 518.551, subdivision 10.

(o) "Register" means to file a support order or judgment determining parentage in the office of the court administrator.

(p) "Registering tribunal" means a tribunal in which a support order is registered.

(q) "Responding state" means a state to which a proceeding is forwarded under this chapter or a law substantially similar to this chapter, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act.

(r) "Responding tribunal" means the authorized tribunal in a responding state.

(s) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(t) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States. "State" includes an Indian tribe and a foreign jurisdiction that has established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this chapter.

(u) "Support enforcement agency" means a public official or agency authorized to:

(1) seek enforcement of support orders or laws relating to the duty of support;

(2) seek establishment or modification of child support;

(3) seek determination of parentage; or

(4) locate obligors or their assets.

(v) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, spouse, or former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.

(w) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.²⁰⁵

205. MINN. STAT. § 518C.101 (1994).

Section 518C.101 contains a host of definitions not found in prior law.²⁰⁶ The major changes are discussed below.

Subsections (a) and (b) broadly define "child," without elaborating on the age of majority. This allows Minnesota to enforce decrees from other jurisdictions where the age of majority differs from Minnesota's. Although the Twenty-Sixth Amendment to the United States Constitution established eighteen as the voting age in state and federal elections, states remain free to promulgate their own definitions of majority for child support purposes.²⁰⁷

Subsection (c) retains the scope of prior Minnesota law,²⁰⁸ while making it clear that UIFSA can be used in maintenance and child support actions. It also makes clear that UIFSA may be used to collect any unsatisfied support obligations. Before UIFSA, Minnesota had broadly defined a support obligation as one arising from a "divorce, separation, separate maintenance or otherwise."²⁰⁹ "Otherwise" was interpreted as encompassing URESA proceedings.²¹⁰ The duty to support under prior and present law continues even if child support has not yet been imposed, has been suspended, or at some point eliminated.²¹¹

Minnesota's strong public policy is illustrated by *Douglas County Child Support Enforcement Unit v. Cavegn*.²¹² The custodial mother refused the father visitation with the couple's minor

206. Compare *id.* with RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.02 (1992)).

207. See, e.g., MINN. STAT. § 518.54, subd. 2 (1994) (defining "child" as an "individual under 18 years of age, an individual under age 20 who is still attending secondary school, or an individual who, by reason of physical or mental condition, is incapable of self-support"). A court may extend child support beyond the age of majority if it finds "a demonstrated inability of the 18-year-old, still in high school, to be self supporting." *Welsh v. Welsh*, 446 N.W.2d 191, 194 (Minn. Ct. App. 1989).

208. Prior law defined the duty of support to mean a duty of support, whether imposed or imposable by law or by order, decree or judgment of a court, whether interlocutory or final, or whether incidental to an action for divorce, separation, separate maintenance or otherwise and includes the duty to pay arrearages of support past due and unpaid, as well as the duty to provide medical, health, or dental insurance or support. RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.02, subd. 3 (1992)).

209. *Id.*

210. *Douglas County Child Support Enforcement Unit v. Cavegn*, 420 N.W.2d 244, 245-46 (Minn. Ct. App. 1988).

211. *Wisconsin ex rel. Doucette v. Kraskey*, 496 N.W.2d 425, 427 (Minn. Ct. App. 1993).

212. 420 N.W.2d 244 (Minn. Ct. App. 1988).

child and moved to Wisconsin after she was held in contempt for interfering with the father's visitation efforts.²¹³ The court held that, despite the mother's conduct, Wisconsin was not precluded from bringing a support action on behalf of the minor child against the Minnesota father.²¹⁴

Subsection (d) borrows the concept of the "home state" of a child from the Uniform Child Custody Jurisdiction Act, which has been adopted in all fifty states, and from the federal Parental Kidnapping Prevention Act.²¹⁵

Subsection (f) provides that Minnesota must recognize another state's direct income withholding by an obligor's employer based on "other legal process."²¹⁶ It is intended that recognition not be limited to those cases where an order has been recognized as an income withholding order.²¹⁷

While subsections (g) and (h) provide definitions for an "initiating state" and an "initiating tribunal," the Act allows an obligee to file an interstate action in the responding state without first filing with an initiating tribunal.²¹⁸

Subsection (k) defines "law" broadly and is similar to the definition under RURESA.²¹⁹

The language in subsection (t) allows Minnesota to enforce a support order from another jurisdiction even though the jurisdiction has not enacted UIFSA.²²⁰ The reciprocity required under former law is no longer required.²²¹

Subsection (u) includes within its definition Minnesota's

213. Douglas County Child Support Enforcement Unit v. Cavegn, 420 N.W.2d at 245-46.

214. *Id.* at 246.

215. UNIF. INTERSTATE FAMILY SUPPORT ACT § 101 cmt., 9 U.L.A. 128 (Supp. 1994). See MINN. STAT. § 518A.02(e) (1994) (defining "home state").

216. MINN. STAT. § 518C.101(f) (1994).

217. UNIF. INTERSTATE FAMILY SUPPORT ACT § 101 cmt., 9 U.L.A. 128 (Supp. 1994). "Federal law requires that each state provide for income withholding 'without the necessity of any application therefor . . . or for any further action . . . by the court or other entity which issued such order.'" *Id.* (quoting 42 U.S.C. § 666(b)(2) (1988)).

218. *Id.* Subsections (q) and (r) are written to permit the direct filing of a petition without the intervention of an initiating tribunal. *Id.* at 129.

219. See RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.02, subd. 6 (1992) (defining "law" as both statutory and common law)).

220. UNIF. INTERSTATE FAMILY SUPPORT ACT § 101 cmt., 9 U.L.A. 128, 129 (Supp. 1994).

221. *Id.* See Nicol v. Tanner, 310 Minn. 68, 69 n.1, 256 N.W.2d 796, 797 n.1 (1976) (construing URESA as including "any foreign jurisdiction" if the foreign jurisdiction had a substantially similar reciprocal law for enforcement of child support obligations).

Title IV-D agency,²²² the Department of Human Services.

Subsection (w) replaces the formerly restrictive definition of "court"²²³ with a broader definition that encompasses a court, administrative agency, or quasi-judicial entity. This change allows the existing centralized administrative law judge system to continue hearing support matters.

2. *Section 518C.102: Tribunal of This State*

A court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage are tribunals of this state.²²⁴

This section identifies the courts and administrative agencies that constitute the tribunal authorized to determine family support matters. It is a broad grant of authority.

3. *Section 518C.103: Remedies Cumulative*

Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law.²²⁵

UIFSA does not create an exclusive process that must be followed where there are other available remedies.²²⁶

B. *Jurisdiction*

1. *Section 518C.201: Bases for Jurisdiction Over Nonresident*

In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- (1) the individual is personally served with a summons or

222. See *supra* notes 51-53 and accompanying text for an explanation of Title IV-D.

223. See RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.02, subd. 2 (1992)).

224. MINN. STAT. § 518C.102 (1994).

225. *Id.* § 518C.103.

226. The UIFSA drafting committee gave the following example to illustrate the meaning of this rule: "[A] petitioner may decide to file an action directly in the state of residence of the respondent under the generally applicable support law, thereby submitting to the personal jurisdiction of that forum, and forego reliance on the Act." UNIF. INTERSTATE FAMILY SUPPORT ACT § 103 cmt., 9 U.L.A. 131 (Supp. 1994).

- comparable document within this state;
- (2) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) the individual resided with the child in this state;
- (4) the individual resided in this state and provided prenatal expenses or support for the child;
- (5) the child resides in this state as a result of the acts or directives of the individual;
- (6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
- (7) the individual asserted parentage under sections 257.51 to 257.75; or
- (8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.²²⁷

This section contains many new and far-reaching provisions not found in prior Minnesota law. It creates a long-arm statute that gives Minnesota courts jurisdiction over a nonresident respondent for the purposes of establishing a child support order; determining parentage; and, in a limited fashion, establishing maintenance.²²⁸

Before this provision became law, Minnesota did not have a long-arm statute directed specifically at child support, maintenance, and parentage matters. Rather, Minnesota courts struggled to find sufficient linguistic justification in its tort long-arm statute to give district courts personal jurisdiction outside Minnesota in domestic disputes.²²⁹ The tort statute has

227. MINN. STAT. § 518C.201 (1994).

228. UNIF. INTERSTATE FAMILY SUPPORT ACT § 201 cmt., 9 U.L.A. 132 (Supp. 1994).

229. The courts used Minnesota Statutes Section 543.19, which provided:

As to a cause of action arising from any acts enumerated in this subdivision, a court of this state with jurisdiction of the subject matter may exercise personal jurisdiction over . . . any nonresident individual . . . in the same manner as if . . . the individual were a resident of this state. This section applies if, in person or through an agent, the . . . nonresident individual:

- (a) Owns, uses, or possesses any real or personal property situated in this state, or
- (b) Transacts any business within the state, or
- (c) Commits any act in Minnesota causing injury or property damage, or
- (d) Commits any act outside Minnesota causing injury or property damage in Minnesota

been interpreted as covering service on out-of-state defendants in paternity actions with the "tort" construed as a failure to provide child and spousal support.²³⁰ However, the same "tort" went undiscovered in dissolution actions when modification of an existing child support award was sought.²³¹ Hopefully, UIFSA will put an end to the confusion surrounding the jurisdictional questions in this area.

It should be noted that, although it is not expressly stated, Subsections (1), (2), and (8) can also be applied to maintenance obligations.²³² The power to assert jurisdiction over support issues under UIFSA, however, does not extend a tribunal's jurisdiction to other matters.²³³ UIFSA's long-arm power is limited by the grant of jurisdiction found in this section.

Minnesota Statute Section 518C.201 incorporates without change all eight jurisdictional long-arm provisions recommended and adopted by the United States Commission on Interstate Child Support and by the National Conference of Commissioners on Uniform State Laws.²³⁴ The provisions were incorporated into Minnesota law apparently without regard for the state's present view regarding their constitutionality. Each of the eight subsections found in Minnesota Statute Section 518C.201 is examined below.

a. Subsection (1)

Subsection 518C.201(1) gives Minnesota jurisdiction over a nonresident citizen when an "individual is personally served with a summons or comparable document within this state."²³⁵ This

MINN. STAT. § 543.19, subd. 1 (1994).

230. See, e.g., *State ex rel. Nelson v. Nelson*, 298 Minn. 438, 216 N.W.2d 140 (1974). In this parentage case, the court observed,

Contrary to the defendant's contention, complainant mother has indeed suffered injury, for quite apart from the physical and emotional trauma of bearing the child and rearing it alone, she is faced with the financial burdens of medical and hospital bills. She is also confronted with the expense of rearing their child and possible impairment of her earning power.

Id. at 442, 216 N.W.2d at 143.

231. See *Ferguson v. Ferguson*, 411 N.W.2d 238, 240 (Minn. Ct. App. 1987) (holding court did not have personal jurisdiction over a Montana resident).

232. UNIF. INTERSTATE FAMILY SUPPORT ACT § 201 cmt., 9 U.L.A. 132 (Supp. 1994).

233. *Id.*

234. Compare MINN. STAT. § 518C.201 (1994) with UNIF. INTERSTATE FAMILY SUPPORT ACT § 201, 9 U.L.A. 132 (Supp. 1994).

235. MINN. STAT. § 518C.201(1) (1994).

provision raises no new jurisdictional issues for Minnesota judges and lawyers because it codifies *Burnham v. Superior Court*.²³⁶ *Burnham* reaffirmed the constitutional validity of the assertion of personal jurisdiction over an out-of-state resident based solely upon personal service within a state.²³⁷

b. Subsection (2)

Subsection 518C.201(2) provides that Minnesota has personal jurisdiction over a nonresident citizen if the "individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction."²³⁸ This subsection expresses the principle that a nonresident party concedes personal jurisdiction by seeking affirmative relief or by submitting to the jurisdiction by answer or entering an appearance. It is a widely accepted jurisdictional principle that a party requesting affirmative relief from a court submits himself or herself to the personal jurisdiction of the tribunal.²³⁹ Consequently, this section should not create problems, unless the "filing a responsive document" language is interpreted differently from existing law, which is unlikely. It should be noted that the Minnesota Court of Appeals has held that an assertion of a cross-claim does not constitute a waiver to a properly raised jurisdictional defense grounded in the constitutional right to due process.²⁴⁰

c. Subsection (3)

Subsections 518C.201(3) through (8) are derived from the Uniform Parentage Act, the Texas Family Code, and the New

236. See UNIF. INTERSTATE FAMILY SUPPORT ACT § 201 cmt., 9 U.L.A. 132 (Supp. 1994).

237. *Burnham v. Superior Court*, 495 U.S. 604, 622 (1990); see generally *Forward to The Future of Personal Jurisdiction: A Symposium on Burnham v. Superior Court*, 22 RUTGERS L.J. 559 (1991) (summarizing the holding and facts of the *Burnham* case); Patrick J. Borchers, *The Death of the Constitutional Law of Personal Jurisdiction: From Pennoyer to Burnham and Back Again*, 24 U.C. DAVIS L. REV. 19, 78-87 (1990) (discussing the development of personal jurisdiction and the *Burnham* holding).

238. MINN. STAT. § 518C.201(2) (1994).

239. John J. Sampson, *Uniform Interstate Family Support Act (with Unofficial Annotations)*, 27 FAM. L.Q. 93, 115 n.50 (1993).

240. *Johnson Bros. Corp. v. Arrowhead Co.*, 459 N.W.2d 160, 162-63 (Minn. Ct. App. 1990).

York Family Court Act.²⁴¹ Subsection 3 gives Minnesota personal jurisdiction over a nonresident citizen if "the individual resided with the child in this state."²⁴² This provision raises a technical concern regarding the meaning of "resided." Does the term mean to establish a residence? If so, Minnesota Statutes Section 518.003 defines residence as "the place where a party has established a permanent home from which the party has no present intention of moving."²⁴³ Or, does "resided" simply mean living in the state for a period of time without an intent to make it a permanent place of abode? The commentary to this section provides no guidance; consequently, one will have to wait for the courts to provide guidance.

Another technical concern involves the residence of a child. Minnesota takes the view that because children are legally incapable of forming the intent necessary to establish a domicile, they take the same domicile as their parents.²⁴⁴ If a child is born out-of-wedlock, the child normally takes the domicile of its mother.²⁴⁵ If the mother's residence is different from that of the alleged putative father, which residence governs? Once again, there is no guidance provided in UIFSA for determining the answer to this question.

d. Subsection (4)

Subsection (4) gives Minnesota jurisdiction over a nonresident citizen where "the individual resided in this state and provided prenatal expenses or support for the child."²⁴⁶ Once the technical definition of "resided" is resolved, the remaining language seems consistent with existing Minnesota law. For example, in *Impola v. Impola*,²⁴⁷ the court held that the petitioner had sufficiently established injury—the nonsupport of ex-wife and child—within Minnesota to justify the exercise of personal jurisdiction over the ex-husband even though he was living in Texas.²⁴⁸ The court observed that the birth of the couple's

241. UNIF. INTERSTATE FAMILY SUPPORT ACT § 201 cmt., 9 U.L.A. 132 (Supp. 1994).

242. MINN. STAT. § 518C.201(3) (1994).

243. *Id.* § 518.003, subd. 2 (1994). This is the traditional definition of domicile.

244. *See, e.g., In re Pratt*, 219 Minn. 414, 421, 18 N.W.2d 147, 152 (1945).

245. *Id.* at 421, 18 N.W.2d at 152.

246. MINN. STAT. § 518C.201(4) (1994).

247. 464 N.W.2d 296 (Minn. Ct. App. 1990).

248. *Impola v. Impola*, 464 N.W.2d at 300.

child and the ex-wife's injury occurred while the respondent was a resident of Minnesota.²⁴⁹ The court stated that it was "critically important" that the conception took place in Minnesota; that the putative father acknowledged paternity within Minnesota; and that the alleged father was a resident when the child was conceived, during the pregnancy, and at times thereafter.²⁵⁰

e. Subsection (5)

Subsection (5) declares that Minnesota has personal jurisdiction over a nonresident citizen if "the child resides in this state as a result of the acts or directives of the individual."²⁵¹ This provision raises personal jurisdictional questions, the answers to which turn on how Minnesota courts interpret the "acts or directives" language. In *Kulko v. Superior Court*,²⁵² the United States Supreme Court held that the mere presence of children in a state does not give that state jurisdiction over their noncustodial nonresident parent.²⁵³ The fact that the child in *Kulko* moved to California with her father's permission was not considered by the Court a sufficient "act or directive" to give California jurisdiction over the out-of-state father.²⁵⁴

In a Minnesota parentage action, *Brown County Family Service Center v. Miner*,²⁵⁵ the alleged father of a child born to a woman in Minnesota had never physically been within the state.²⁵⁶ During the mother's pregnancy, however, he sent letters to her in Minnesota and also made a few telephone calls to her Minnesota home.²⁵⁷ The court of appeals held that these contacts were not sufficient to give Minnesota personal jurisdic-

249. *Id.* at 299.

250. *Id.*; see also *Brown County Family Serv. Ctr. v. Kahoun*, 427 N.W.2d 20, 22-23 (Minn. Ct. App. 1988).

251. MINN. STAT. § 518C.201(5) (1994).

252. 436 U.S. 84 (1978).

253. *Kulko v. Superior Court*, 436 U.S. at 100-01. In *Kulko*, Appellant and Respondent, a husband and wife, were New York residents. *Id.* at 86. Respondent moved to California after separation, and Appellant remained in New York. *Id.* at 88. Respondent served Appellant with child support and divorce papers. *Id.* The Supreme Court reasoned that just because Appellant agreed to send his daughter to school in California, he had not "purposefully availed himself" of the "benefits and protections" of the state. *Id.* at 94. Thus, no personal jurisdiction existed. *Id.*

254. *Id.* at 93-94.

255. 419 N.W.2d 117 (Minn. Ct. App. 1988).

256. *Brown County Family Serv. Ctr. v. Miner*, 419 N.W.2d at 118.

257. *Id.*

tion over the father as the contacts failed to satisfy the constitutionally mandated minimum contacts test.²⁵⁸ The court noted that the father could not have anticipated being required to defend a paternity action in Minnesota based on a few phone calls and letters sent to Minnesota addresses.²⁵⁹ The court also noted that the alleged father's contacts with Minnesota were not directly connected to the underlying action and did not occur until eight months after the contact that led to the paternity action.²⁶⁰

The new UIFSA provision leaves the meaning of "act or directive" open to judicial interpretation on a case-by-case basis. Initially, the provision appears to conflict with *Kulko* and existing Minnesota law.²⁶¹

f. Subsection (6)

Subsection (6) declares that Minnesota courts may exercise personal jurisdiction over a nonresident citizen if "the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse."²⁶² In *Sherburne County Social Services v. Kennedy*,²⁶³ the alleged father engaged in a single act of consensual intercourse with the mother while both were residents of Minnesota.²⁶⁴ Shortly after the incident,

258. *Id.* at 119.

259. *Id.*

260. *Id.* See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479-80 (1985) (holding that a contract to own a franchise in a foreign state establishes minimum contact necessary for long-arm jurisdiction); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (holding that foreseeability of causing injury in a forum state is insufficient for granting long-arm jurisdiction); *Hanson v. Denckla*, 357 U.S. 235, 253 (1958) (holding that due process commands that a potential defendant should reasonably anticipate out-of-state litigation before long-arm jurisdiction is granted); *International Shoe Co. v. Washington*, 326 U.S. 310, 319-21 (1945) (holding that a corporation's act of conducting business in state through its agents established presence sufficient for in personam jurisdiction).

261. See *West American Ins. Co. v. Westin, Inc.* 337 N.W.2d 676, 679-80 (Minn. 1983) ("Minnesota's interest in providing a forum, standing alone, does not support the attempted exercise of personal jurisdiction over a foreign defendant. In essence, this consideration is the precise opposite to the correct form of analysis."); *Ulmer v. O'Malley*, 307 N.W.2d 775, 777 (Minn. 1981) (holding no jurisdiction over defendant father who had cooperated with requests of adoption agency in Minnesota but had not visited Minnesota).

262. MINN. STAT. § 518C.201(6) (1994).

263. 409 N.W.2d 907 (Minn. Ct. App. 1987), *aff'd*, 426 N.W.2d 866 (Minn. 1988).

264. *Sherburne County Social Servs. v. Kennedy*, 409 N.W.2d at 908.

the alleged father moved to Montana.²⁶⁵ Several more incidents of intercourse occurred in Montana, one which allegedly led to a pregnancy.²⁶⁶ Following the birth of a child in Minnesota, a Minnesota parentage action was begun against the alleged father to determine responsibility for medical expenses related to the birth and to establish child support.²⁶⁷ The court of appeals held that while the long-arm statute applied, neither the nature nor the quality of the contact satisfied due process.²⁶⁸ *Kennedy* does not necessarily bar an action under UIFSA where the conception occurs within the state. The Act distinguishes between intercourse as a contact and conception.

g. Subsection (7)

Subsection (7) gives Minnesota jurisdiction over a nonresident if the individual claims parentage under Minnesota Statute Sections 257.51 to 257.75. Subsection (7) assumes that Minnesota maintains a putative father registry, and the subsection is intended to give Minnesota jurisdiction over any putative father.

Subsection (7) links personal jurisdiction to the use of the Recognition of Parentage form²⁶⁹ developed by the Department of Human Services and sent to all hospitals in the state. By signing the form, a biological father gives up the right to have blood or genetic testing to prove that he is not the biological father, the right to a trial to determine if he is the biological father of the child, and the right to have an attorney represent him in a parentage action.²⁷⁰

h. Subsection (8)

This subsection "tracks the broad, catch-all provisions found in many state statutes."²⁷¹ Standing alone, this provision was found to be inadequate to sustain a child support order in *Kulko*

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.* at 908-10.

269. MINNESOTA DEP'T OF HUMAN SERVS., RECOGNITION OF PARENTAGE, FORM DHS-3159 (November 1993).

270. See *id.* The "Waiver of Rights" contained on the back of the Recognition of Parentage form states, "By signing this Recognition of Parentage form, the parents give up the rights listed above." *Id.* The jurisdictional waiver is incorporated by language found in Section 518C.201(7).

271. UNIF. INTERSTATE FAMILY SUPPORT ACT § 201 cmt., 9 U.L.A. 132 (Supp. 1994).

v. Superior Court.²⁷² Consequently, this section does not give Minnesota courts additional jurisdictional power over out-of-state citizens.

The language in the subsection to the effect that Minnesota may exercise personal jurisdiction over a nonresident citizen if "there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction"²⁷³ has no meaning unless Congress mandates that each state adopt UIFSA and then delegates a portion of its jurisdictional power to the states. To do this, Congress must make findings consistent with its constitutional powers²⁷⁴ that due process is satisfied when the state where a child is domiciled asserts jurisdiction over the nonresident party.²⁷⁵ The United States Supreme Court must then overrule *Kulko v. Superior Court*.²⁷⁶

2. Section 518C.202: Procedure When Exercising Jurisdiction over Nonresident

A tribunal of this state exercising personal jurisdiction over a nonresident under section 518C.201 may apply section 518C.316 to receive evidence from another state, and section 518C.318 to obtain discovery through a tribunal of another state. In all other respects, sections 518C.301 to 518C.701 do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this chapter.²⁷⁷

When Minnesota initiates a support action against a nonresident, the action is essentially a one-state proceeding despite the fact that the parties involved in the dispute reside in

272. *Id.* *Kulko v. Superior Court* can be found at 436 U.S. 84 (1978).

273. MINN. STAT. § 518C.210(8) (1994).

274. Congress must make findings consistent with its powers contained in the Due Process Clause of the Fifth and Fourteenth Amendments, the Commerce Clause, the General Welfare Clause, the Full Faith and Credit Clause, and the Supremacy Clause.

275. Haynes, *supra* note 20, at 23 ("Congress could . . . declare that due process is satisfied when a child support action is brought where the child resides, regardless of the noncustodial parent's contacts with the forum state.").

276. In *Kulko*, the Court held that the mere act of sending a child to California to live with her mother does not provide in personam jurisdiction over the father, a New York domiciliary. *Kulko*, 436 U.S. at 101.

277. MINN. STAT. § 518C.202 (1994).

different states.²⁷⁸ But for the two exceptions found in this section, Minnesota must apply its own procedural and substantive law, including its rules on choice of law other than those established by the Act.

The two exceptions to this general rule involve the use of evidence and discovery. Section 202 permits Minnesota tribunals to utilize the special rules of evidence and procedures found in Section 316 of the Act, resulting in a kind of two-state effort.²⁷⁹ The two-state discovery procedures of Section 318 of the Act are also made applicable to a one-state proceeding when a foreign tribunal can assist a Minnesota tribunal in that process.²⁸⁰ The exceptions are intended to facilitate interstate exchange of information and to enable nonresidents to fully participate without requiring the nonresident to appear in the state.²⁸¹

3. Section 518C.203: Initiating and Responding Tribunal of This State

Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.²⁸²

This section provides that a Minnesota court may in certain circumstances act as an initiating or responding tribunal even when two or more states are involved. If proceedings are initiated in Minnesota after similar proceedings have been filed in another state, Minnesota can exercise jurisdiction only if (1) the petition is filed in Minnesota before the time expires in the other state to challenge jurisdiction; (2) the contesting party timely challenges jurisdiction in the other state; and (3) if relevant, Minnesota is the home state of the child.²⁸³

278. UNIF. INTERSTATE FAMILY SUPPORT ACT § 202 cmt., 9 U.L.A. 133 (Supp. 1994).

279. *Id.*

280. *Id.*

281. *Id.*

282. MINN. STAT. § 518C.203 (1994).

283. *Id.* § 518C.204(a). The National Conference of Commissioners on Uniform State Laws felt that it was necessary to provide a new procedure in order to eliminate the multiple orders that were common under URESA. UNIF. INTERSTATE FAMILY SUPPORT ACT § 204 cmt., 9 U.L.A. 134 (Supp. 1994).

4. *Section 518C.204: Simultaneous Proceedings in Another State*

(a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if:

- (1) the petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;
- (2) the contesting party timely challenges the exercise of jurisdiction in the other state; and
- (3) if relevant, this state is the home state of the child.

(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:

- (1) the petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;
- (2) the contesting party timely challenges the exercise of jurisdiction in this state; and
- (3) if relevant, the other state is the home state of the child.²⁸⁴

Rather than applying a “first filing” approach, such as that used by the Uniform Child Custody Jurisdiction Act, to resolve jurisdictional disputes, UIFSA establishes priority for the tribunal in the child’s home state.²⁸⁵ Only if there is no home state does “first filing” control.²⁸⁶

5. *Section 518C.205: Continuing, Exclusive Jurisdiction*

(a) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:

284. MINN. STAT. § 518C.204 (1994).

285. UNIF. INTERSTATE FAMILY SUPPORT ACT § 204 cmt., 9 U.L.A. 134 (Supp. 1994). The federal Parental Kidnapping Prevention Act also chooses the home state of the child to establish priority. *Id.* See 28 U.S.C. § 1738A(c)(A) (1994).

286. UNIF. INTERSTATE FAMILY SUPPORT ACT § 204 cmt., 9 U.L.A. 134 (Supp. 1994).

(1) as long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) until each individual party has filed written consent with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this chapter.

(c) If a child support order of this state is modified by a tribunal of another state pursuant to a law substantially similar to this chapter, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only:

(1) enforce the order that was modified as to amounts accruing before the modification;

(2) enforce nonmodifiable aspects of that order; and

(3) provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(d) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to this chapter.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.²⁸⁷

Subsection (a) “establishes the principle that the issuing tribunal retains continuing, exclusive jurisdiction over the

287. MINN. STAT. § 518C.205 (1994).

support order except in very narrowly defined circumstances."²⁸⁸ For example, a narrowly defined circumstance exists when all the parties and the child reside elsewhere.²⁸⁹ Child support orders may be modified on the agreement of both parties or if all relevant persons (the obligor, obligee, and child) have left the issuing state.²⁹⁰ Modification requires, however, that the tribunal have personal jurisdiction over the respondent.²⁹¹

Subsection (f) prohibits Minnesota from modifying an existing maintenance order from another state. This is a departure from RURESA, which treated maintenance and child support orders identically.²⁹² The model act's drafting committee gave three reasons for giving child support and maintenance different consideration. First, under RURESA, interstate modification of maintenance had been rare.²⁹³ Second, "prohibition of modification of spousal support is consistent with the basic principle that a tribunal should apply local law if at all possible."²⁹⁴ Third, because the standards for modification of child support and maintenance differ substantially, a dramatic improvement in the obligor's economic circumstances would have little impact on a maintenance modification action, but it would have an impact on the child support award.²⁹⁵

6. *Section 518C.206: Enforcement and Modification of Support Order by Tribunal Having Continuing Jurisdiction*

(a) A tribunal of this state may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(b) A tribunal of this state having continuing, exclusive jurisdiction over a support order may act as a responding

288. UNIF. INTERSTATE FAMILY SUPPORT ACT § 205 cmt., 9 U.L.A. 135 (Supp. 1994).

289. *Id.*

290. *Id.* at 136.

291. MINN. STAT. § 518C.611(a)(1) (1994).

292. UNIF. INTERSTATE FAMILY SUPPORT ACT § 205 cmt., 9 U.L.A. 135, 136 (Supp. 1994).

293. *Id.*

294. *Id.* This was designed to insure efficient handling of cases and to minimize choice of law problems. *Id.*

295. *Id.* The comments also state that the disparity "is founded on a policy choice that post-divorce success should benefit the obligor's child, but not an ex-spouse." *Id.*

tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply section 518C.316 to receive evidence from another state and section 518C.318 to obtain discovery through a tribunal of another state.

(c) A tribunal of this state which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.²⁹⁶

Section 206 is the “correlative” of the exclusive jurisdictional model asserted in Section 205.²⁹⁷ Subsection (a) of the model act requires that the enacting state recognize the continuing, exclusive jurisdiction of other tribunals over support orders.²⁹⁸ It authorizes the initiation of requests for modification to the issuing state.²⁹⁹ Subsection (b) makes it clear that the power to modify a child support order rests with the issuing state, “provided it retains a sufficient nexus with its order.”³⁰⁰ That nexus is defined as “any situation in which the child or at least one of the parties continues to reside in the issuing state.”³⁰¹ Subsection (c) requires Minnesota courts to adhere to the “one-order-at-a-time system” in maintenance disputes.³⁰²

7. *Section 518C.207: Recognition of Child Support Orders*

(a) If a proceeding is brought under this chapter, and one or more child support orders have been issued in this or another state with regard to an obligor and a child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

- (1) If only one tribunal has issued a child support order, the order of that tribunal must be recognized.
- (2) If two or more tribunals have issued child support

296. MINN. STAT. § 518C.206 (1994).

297. UNIF. INTERSTATE FAMILY SUPPORT ACT § 206 cmt., 9 U.L.A. 137 (Supp. 1994).

298. *Id.*

299. *Id.*

300. *Id.*

301. *Id.*

302. *Id.*

orders for the same obligor and child, and only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal must be recognized.

(3) If two or more tribunals have issued child support orders for the same obligor and child, and more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.

(4) If two or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state may issue a child support order, which must be recognized.

(b) The tribunal that has issued an order recognized under paragraph (a) is the tribunal having continuing, exclusive jurisdiction.³⁰³

Section 207 deals with the problem created by multiple orders. If multiple orders exist and none can be distinguished as being in conflict with UIFSA, an order issued by the child's home state has the highest priority.³⁰⁴ Should more than one of these orders exist, priority goes to the most recent order.³⁰⁵ If no priority exists under the statutory scheme, the forum tribunal must issue a new order.³⁰⁶

Section 207 is not without doubt. Orders that are issued by state courts must be given full faith and credit by other states.³⁰⁷ This guarantees that one state's lawful exercise of jurisdiction over a United States resident will be recognized by another state.³⁰⁸ Consequently, Section 207 does not attempt to interfere with the enforcement of accrued arrearage. However, it does establish a system for prospective enforcement

303. MINN. STAT. § 518C.207 (1994).

304. UNIF. INTERSTATE FAMILY SUPPORT ACT § 207 cmt., 9 U.L.A. 138 (Supp. 1994).

305. *Id.*

306. *Id.*

307. BLUEPRINT FOR REFORM, *supra* note 2, at 90.

308. *Id.*

of competing orders.³⁰⁹

8. *Section 518C.208: Multiple Child Support Orders for Two or More Obligees*

In responding to multiple registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this state.³¹⁰

This provision requires that Minnesota tribunals give equal weight to one or more foreign support orders that involve two or more families of the same obligor. To handle the practical difficulties when such support orders exceed the maximum allowed for income withholding,³¹¹ the orders are considered as issued by a Minnesota tribunal.

9. *Section 518C.209: Credit for Payments*

Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this state.³¹²

Section 209 is essentially the same as previous law.³¹³ Under the one-order scheme of UIFSA, only one state acts as the issuing tribunal. However, because it will take time to fully implement the one-state scheme on a national level, it was felt "necessary to continue to mandate pro tanto credit for actual

309. UNIF. INTERSTATE FAMILY SUPPORT ACT § 207 cmt., 9 U.L.A. 138 (Supp. 1994).

310. MINN. STAT. § 518C.208 (1994).

311. The federal government requires that states cap the maximum withheld from an obligor in accordance with the employer withholding requirements set forth in 42 U.S.C. § 666(b)(6)(A) and the wage garnishment requirements set forth in 15 U.S.C. § 1673(a). UNIF. INTERSTATE FAMILY SUPPORT ACT § 208 cmt., 9 U.L.A. 138 (Supp. 1994). See also 42 U.S.C. § 666(b) (1988); 15 U.S.C. § 1673(a) (1994).

312. MINN. STAT. § 518C.209 (1994).

313. Compare *id.* with RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.20 (1992)).

payments made against all existing orders.”³¹⁴

C. Civil Provisions of General Application

1. Section 518C.301: Proceedings Under This Chapter

(a) Except as otherwise provided in this chapter, sections 518C.301 to 518C.319 apply to all proceedings under this chapter.

(b) This chapter provides for the following proceedings:

(1) establishment of an order for spousal support or child support pursuant to section 518C.401;

(2) enforcement of a support order and income-withholding order of another state without registration pursuant to sections 518C.501 and 518C.502;

(3) registration of an order for spousal support or child support of another state for enforcement pursuant to sections 518C.601 to 518C.612;

(4) modification of an order for child support or spousal support issued by a tribunal of this state pursuant to sections 518C.203 to 518C.206;

(5) registration of an order for child support of another state for modification pursuant to sections 518C.601 to 518C.612;

(6) determination of parentage pursuant to section 518C.701; and

(7) assertion of jurisdiction over nonresidents pursuant to sections 518C.201 and 518C.202.

(c) An individual petitioner or a support enforcement agency may commence a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.³¹⁵

The details found in Section 301 were included because the drafting committee believed that the majority of persons administering the Act would not be attorneys and therefore needed as much assistance as possible.³¹⁶

314. UNIF. INTERSTATE FAMILY SUPPORT ACT § 209 cmt., 9 U.L.A. 139 (Supp. 1994).

315. MINN. STAT. § 518C.301 (1994).

316. UNIF. INTERSTATE FAMILY SUPPORT ACT § 301 cmt., 9 U.L.A. 139, 139-40 (Supp. 1994) (commenting that this section, although unusual for a uniform act, serves as a “road map” indicating the types of actions authorized by UIFSA).

Subsection (a) requires application of the general provisions of the chapter to all UIFSA proceedings.³¹⁷ Subsection (b) declares that child support and spousal maintenance orders are to be handled in essentially the same manner under Chapter 518C.³¹⁸ However, Subsection (b)(5) limits modification of support orders to those involving children.³¹⁹ A second state, as noted above, may not modify a spousal support order.³²⁰ Subsection (c) is derived from the two-state procedure established under RURESA.³²¹

2. *Section 518C.302: Action by Minor Parent*

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.³²²

Section 302 is essentially the same as previous law.³²³ It permits a minor to maintain an action without appointment of a guardian ad litem, even if the law of the jurisdiction requires such appointment for in-state cases.³²⁴

3. *Section 518C.303: Application of Law of This State*

Except as otherwise provided by this chapter, a responding tribunal of this state:

- (1) shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and
- (2) shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.³²⁵

317. *Id.* at 140.

318. *Id.*

319. *Id.*

320. *See supra* part IV.B.5.

321. UNIF. INTERSTATE FAMILY SUPPORT ACT § 301 cmt., 9 U.L.A. 139, 140 (Supp. 1994); *see also* RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.06 (1992)).

322. MINN. STAT. § 518C.302 (1994).

323. *See* RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.08 (1992) (petition for a minor)).

324. UNIF. INTERSTATE FAMILY SUPPORT ACT § 302 cmt., 9 U.L.A. 140 (Supp. 1994).

325. MINN. STAT. § 518C.303 (1994).

Section 303 gives Minnesota, as the forum state, the same powers in an action involving interstate parties as it does in intrastate disputes.³²⁶ It does not significantly alter prior law.³²⁷

4. *Section 518C.304: Duties of Initiating Tribunal*

Upon the filing of a petition authorized by this chapter, an initiating tribunal of this state shall forward three copies of the petition and its accompanying documents:

- (1) to the responding tribunal or appropriate support enforcement agency in the responding state; or
- (2) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.³²⁸

Section 304 alters previous law, which required that the initiating court find that the petition set forth facts from which it may be determined that the obligor owes a duty of support.³²⁹ Under the new law, the initiating tribunal no longer is required to make a preliminary finding.³³⁰ Its role is purely ministerial in that it simply forwards the documents to the responding tribunal.³³¹

5. *Section 518C.305: Duties and Powers of Responding Tribunal*

- (a) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to section 518C.301, paragraph (c), it shall cause the petition or pleading to be filed and notify the petitioner by first class mail where and when it was filed.

326. UNIF. INTERSTATE FAMILY SUPPORT ACT § 303 cmt., 9 U.L.A. 141 (Supp. 1994).

327. See RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.04 (1992) (declaring that "[t]he rules of civil procedure for district court apply to proceedings" under RURESA)).

328. MINN. STAT. § 518C.304 (1994).

329. See RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.09 (1992) (stating that the initiating court possesses duty to determine whether support is owed)).

330. UNIF. INTERSTATE FAMILY SUPPORT ACT § 304 cmt., 9 U.L.A. 141 (Supp. 1994).

331. *Id.* (citing *Mossburg v. Coffman*, 629 P.2d 745, 748 (Kan. Ct. App. 1981); *Neff v. Johnson*, 391 S.W.2d 760, 764 (Tex. Civ. Ct. App. 1965)).

(b) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:

(1) issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(2) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) order income withholding;

(4) determine the amount of any arrearages, and specify a method of payment;

(5) enforce orders by civil or criminal contempt, or both;

(6) set aside property for satisfaction of the support order;

(7) place liens and order execution on the obligor's property;

(8) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(9) issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(10) order the obligor to seek appropriate employment by specified methods;

(11) award reasonable attorney's fees and other fees and costs; and

(12) grant any other available remedy.

(c) A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this state may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order by first class mail to the petitioner and the respondent and to the initiating tribunal, if any.³³²

332. MINN. STAT. § 518C.305 (1994).

This section changes prior law.³³³ Under UIFSA, the physical seizure of an obligor is left to the procedures available under existing Minnesota law, as in other civil cases.³³⁴

Subsection (c) mandates that support calculation sheets be included with a support order.³³⁵

Subsection (d) declares that Minnesota may not condition payment of a support order issued under Chapter 518C upon a party's compliance with visitation provisions.³³⁶ Minnesota, along with a majority of jurisdictions, takes the position that the noncustodial parent may not withhold child support because the custodial parent has interfered with visitation.³³⁷ The welfare of the child is viewed as the primary consideration in a support proceeding.³³⁸ A child will be protected as much as possible from being deprived of support because of a dispute between parents.³³⁹

*State ex rel. Sauer v. Hellesvig*³⁴⁰ illustrates the concern the courts have over ensuring that minor children receive support. Hellesvig, a former United States serviceman, acknowledged paternity of a child born to a West German resident.³⁴¹ The West German government petitioned St. Louis County, Minnesota, under the Uniform Reciprocal Enforcement of Support Act

333. See RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.11 (1992) (jurisdiction by arrest), § 518C.12 (1992) (duty of court and prosecuting attorney), § 518C.17 (1992) (order of support), and § 518C.27 (1992) (payments)).

334. UNIF. INTERSTATE FAMILY SUPPORT ACT § 305 cmt., 9 U.L.A. 142 (Supp. 1994).

335. *Id.* at 142-43.

336. *Id.* at 143.

337. See *England v. England*, 337 N.W.2d 681, 684 (Minn. 1983) (citing Minnesota Statutes Section 518.612 to support the conclusion that the Minnesota Legislature does not allow interference with visitation as a defense for failing to provide support payments); *Colorado ex rel. McDonnell v. McCutcheon*, 337 N.W.2d 645, 650 (Minn. 1983) (holding that deprivation of visitation is not a proper factor to consider in determining what level of support is appropriate).

Minnesota Statutes Section 518.612 states in part:

[I]nterference with visitation rights or taking a child from this state without permission of the court or the noncustodial parent [is not] a defense to nonpayment of support.

MINN. STAT. § 518.612 (1994).

338. *State ex rel. Sauer v. Hellesvig*, 376 N.W.2d 503, 505 (Minn. Ct. App. 1985).

339. *Wisconsin ex rel. Southwell v. Chamberland*, 361 N.W.2d 814, 816-17 (Minn. 1985) (noting that children should not be pawns in a struggle between parents and that a child should not be affected because one parent violates a decree).

340. 376 N.W.2d 503 (Minn. Ct. App. 1985).

341. *State ex rel. Sauer v. Hellesvig*, 376 N.W.2d at 504.

(URESAs), to enforce Hellesvig's child support obligations.³⁴² The West German government notified St. Louis County and Hellesvig that the child's mother forbade visitation with the daughter.³⁴³ A support order was issued requiring Hellesvig to support the child.³⁴⁴ When compliance with the support order became erratic, a show cause order was issued requiring that Hellesvig explain why he should not be held in contempt and why child support payments should not be withheld from his wages.³⁴⁵ Hellesvig attacked the show cause order on the ground that Minnesota Statute Section 518.612 was unconstitutional.³⁴⁶ He claimed that because he had no legal remedy to secure visitation with his daughter, he should not be required to support her.³⁴⁷ While the court did not address the constitutional challenge directly, it held that Hellesvig could not raise interference with visitation as a defense to the support order.³⁴⁸

6. Section 518C.306: Inappropriate Tribunal

If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner by first class mail where and when the pleading was sent.³⁴⁹

This section directs a Minnesota tribunal that erroneously receives UIFSA documents to forward them to the appropriate

342. *Id.*

343. *Id.*

344. *Id.*

345. *Id.* at 505.

346. *Id.*

347. *Id.*

348. *Id.* In its analysis in *Hellesvig*, the court observed that the case did not present any facts that would allow a Minnesota court to assume jurisdiction over visitation rights under Minnesota Statutes Section 518A.03, which contains the jurisdictional provisions of the Uniform Child Custody Jurisdiction Act (UCCJA). *Id.* The court pointed out that the child had never been present in Minnesota, Minnesota was not the child's home state, the best interests of the child did not require that Minnesota assume jurisdiction, and evidence regarding the child's welfare was not available here. *Id.* at 505-06. One or more of these factors must be present in order for Minnesota to assume jurisdiction under the UCCJA. *Id.* Finally, merely because Minnesota had participated in a URESA proceeding with the West German government did not confer jurisdiction on the Minnesota court over the parties (the mother and illegitimate child) in another proceeding. *Id.*

349. MINN. STAT. § 518C.306 (1994).

tribunal. The mandate applies regardless of whether Minnesota is a responding or initiating tribunal.

7. *Section 518C.307: Duties of Support Enforcement Agency*

(a) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this chapter.

(b) A support enforcement agency that is providing services to the petitioner as appropriate shall:

(1) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(2) request an appropriate tribunal to set a date, time, and place for a hearing;

(3) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice by first class mail to the petitioner;

(5) within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication by first class mail to the petitioner; and

(6) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.³⁵⁰

This subsection substantially changes existing Minnesota law. Under the previous statutory language, the focus was on providing an obligee with assistance.³⁵¹ When the legislature

350. MINN. STAT. § 518C.307 (1994).

351. See RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.07 (1992) ("If this state is acting as an initiating state, the prosecuting attorney shall represent the obligee in a proceeding under sections 518C.01 to 518C.36."), § 518C.12, subd. 2 (1992) ("The prosecuting attorney shall prosecute the case diligently, taking all action

enacted UIFSA, it failed to change the word "petitioner," which is used in the model act.³⁵² Consequently, either an obligor or an obligee may request representation. The request may be in the context of establishing an order, enforcing or reviewing an existing order, or modifying an order.³⁵³

Subsection (b) is intended to increase the amount of information that a party receives during the pendency of a UIFSA proceeding.³⁵⁴

Subsection (c) provides little direction on the question of when an attorney-client relationship is created.³⁵⁵ However, there should be little question but that, when a support enforcement agency attorney undertakes to advise either an obligee or an obligor, an attorney-client relationship is created.³⁵⁶

8. Section 518C.308: Duty of Attorney General

If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this chapter or may provide those services directly to the individual.³⁵⁷

necessary in accordance with the laws of this state to enable the court to obtain jurisdiction over the obligor or the obligor's property.")).

352. See UNIF. INTERSTATE FAMILY SUPPORT ACT § 307, 9 U.L.A. 144 (Supp. 1994); see also Sampson, *supra* note 239, at 97 n.10, 134 n.96.

353. UNIF. INTERSTATE FAMILY SUPPORT ACT § 307 cmt., 9 U.L.A. 144 (Supp. 1994).

354. *Id.*

355. *Id.* (noting that the issue is controversial and is left to applicable state law).

356. Representing either an obligee or an obligor carries significant legal consequences. For example, the legislature has provided for settlement or compromise of paternity lawsuits and for the lump sum payment of child support. See MINN. STAT. §§ 257.64, 257.66, subd. 4 (1994). See also *Cox v. Slama*, 355 N.W.2d 401, 403 (Minn. 1984) (holding that an attorney must be appointed to represent an indigent defendant facing civil contempt for failure to pay child support when the court reaches a point in the proceedings that incarceration is a real possibility); *St. George v. St. George*, 304 N.W.2d 640, 646 (Minn. 1981) (holding that a county attorney may represent a spouse in a URESA action to enforce a maintenance obligation); *Hepfel v. Bashaw*, 279 N.W.2d 342, 348 (Minn. 1979) (establishing the right to counsel in paternity proceedings because the adversarial nature of paternity adjudications requires protection of the important interests involved); *Illinois ex rel. Shannon v. Sterling*, 248 Minn. 266, 274-76, 80 N.W.2d 13, 20 (Minn. 1956) (holding that an attorney in a URESA proceeding may take all remedial steps which are ancillary to and reasonably necessary to obtain the relief for which the proceedings were instituted, including requests for visitation and custody); *Nash v. Allen*, 392 N.W.2d 244, 249 (Minn. Ct. App. 1986) (holding that a county attorney could represent natural mother and county in a paternity action).

357. MINN. STAT. § 518C.308 (1994).

This provision continues prior law without change.³⁵⁸ Under prior Minnesota law, a county attorney could represent a spouse in a URESA proceeding for enforcement of maintenance obligations and visitation rights.³⁵⁹ The court has also indicated that an attorney appearing for petitioner in a proceeding under RURESА has implied authority to take all remedial steps that are reasonable and necessary to obtain the relief for which the proceedings were instituted.³⁶⁰

9. Section 518C.309: Private Counsel

An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.³⁶¹

This section recognizes the right of a person to employ private counsel to handle a dispute under this chapter. Minnesota was one of only a handful of states that under RURESА had expressly provided that private counsel may assist in filing an interstate pleading.³⁶²

10. Section 518C.310: Duties of State Information Agency

(a) The unit within the department of human services that receives and disseminates incoming interstate actions under title IV-D of the Social Security Act from section 518C.02, subdivision 1a, is the state information agency under this chapter.

(b) The state information agency shall:

(1) compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under this chapter and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

358. See RURESА, *supra* note 15 (formerly codified at MINN. STAT. § 518C.07 (1992)).

359. *St. George*, 304 N.W.2d at 644.

360. *Shannon*, 248 Minn. at 274, 80 N.W.2d at 20.

361. MINN. STAT. § 518C.309 (1994).

362. See RURESА, *supra* note 15 (formerly codified at MINN. STAT. § 518C.23 (1992)); see also CAL. CIV. PROC. CODE § 1655 (West 1982) (stating that notwithstanding other provisions, privately retained counsel may represent an obligee); HAW. REV. STAT. § 576-25 (1993) (county attorney, corporation counsel, or attorney general may represent child enforcement agency).

- (2) maintain a register of tribunals and support enforcement agencies received from other states;
- (3) forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from an initiating tribunal or the state information agency of the initiating state; and
- (4) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.³⁶³

This section continues the information-gathering duties of a central agency that were found in prior law.³⁶⁴ The Department of Human Services is designated as the central agency in Minnesota.³⁶⁵

11. Section 518C.311: Pleadings and Accompanying Documents

- (a) A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter must verify the petition. Unless otherwise ordered under section 518C.312, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.
- (b) The petition must specify the relief sought. The petition

363. MINN. STAT. § 518C.310 (1994).

364. See RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.02, subd. 1a (1992)).

365. MINN. STAT. § 518C.310(a) (1994).

and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.³⁶⁶

This section establishes the basic requirements for preparing interstate pleadings.

12. Section 518C.312: Nondisclosure of Information in Exceptional Circumstances

Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.³⁶⁷

This section authorizes confidentiality when there is a serious risk of domestic violence or child abduction.³⁶⁸

13. Section 518C.313: Costs and Fees

(a) The petitioner may not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under sections 518C.601 to 518C.612, a hearing is presumed to have been

366. *Id.* § 518C.311.

367. *Id.* § 518C.312.

368. UNIF. INTERSTATE FAMILY SUPPORT ACT § 312 cmt., 9 U.L.A. 147 (Supp. 1994).

requested primarily for delay if a registered support order is confirmed or enforced without change.³⁶⁹

This provision alters previous law, which declared that an "initiating court shall not require payment of either a filing fee or other costs from the obligee, but may request the responding court to collect fees and costs from the obligor."³⁷⁰ New Subsection (a) recognizes that "under UIFSA either the obligor or the obligee may file suit."³⁷¹ Either is permitted to file without payment of a filing fee or other costs.³⁷²

Subsection (b) continues existing law by allowing costs to be assessed only against the obligor.³⁷³

14. Section 518C.314: Limited Immunity of Petitioner

(a) Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this chapter.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in this state to participate in the proceeding.³⁷⁴

This subsection will have little impact in Minnesota as it has adopted a broad immunity perspective in support actions. For example, in *England v. England*,³⁷⁵ the court held that submitting to the jurisdiction of a Minnesota court for purposes of recovering support under RURESА did not automatically subject the spouse to a custody or visitation claim while seeking that

369. MINN. STAT. § 518C.313 (1994).

370. RURESА, *supra* note 15 (formerly codified at MINN. STAT. § 518C.10 (1992)).

371. UNIF. INTERSTATE FAMILY SUPPORT ACT § 313 cmt., 9 U.L.A. 148 (Supp. 1994).

372. *Id.*

373. *Id.*; *see also* RURESА, *supra* note 15 (formerly codified at MINN. STAT. § 518C.10 (1992)).

374. MINN. STAT. § 518C.314 (1994).

375. 337 N.W.2d 681 (Minn. 1983).

support.³⁷⁶

Subsection (b) provides immunity from service of process during the time a party is present in Minnesota.³⁷⁷ Subsection (c) withholds immunity in situations where litigation arises out of actions committed by a party while present in Minnesota for the child support litigation.³⁷⁸

15. Section 518C.315: Nonparentage as Defense

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter.³⁷⁹

This section restates the basic principle of res judicata. In *State ex rel. Mart v. Mart*,³⁸⁰ the Minnesota Court of Appeals held that an affirmative finding of paternity in a judgment and decree of dissolution was res judicata, barring an asserted defense of nonpaternity in a subsequent URESA action.³⁸¹ The ruling occurred even though the husband had waived an issue of paternity in exchange for an agreement with the wife concerning custody and child support arrangements.³⁸² A collateral attack on a prior judgment cannot be made in a UIFSA hearing.³⁸³

16. Section 518C.316: Special Rules of Evidence and Procedure

(a) The physical presence of the petitioner in a responding tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

376. *England v. England*, 337 N.W.2d at 685.

377. See UNIF. INTERSTATE FAMILY SUPPORT ACT § 314 cmt., 9 U.L.A. 149 (Supp. 1994).

378. See *id.* For example, a petitioner who got into a brawl while appearing in Minnesota on an obligation matter would not have immunity from a battery action served while appearing in Minnesota.

379. MINN. STAT. § 518C.315 (1994).

380. 380 N.W.2d 604 (Minn. Ct. App. 1986).

381. *State ex rel. Mart v. Mart*, 380 N.W.2d at 606. The action was brought under prior law. See MINN. STAT. § 518C.07 (1984).

382. *Mart*, 380 N.W.2d at 605. See also *State ex rel. Ondracek v. Blohm*, 363 N.W.2d 113, 115 (Minn. Ct. App. 1985).

383. UNIF. INTERSTATE FAMILY SUPPORT ACT § 315 cmt., 9 U.L.A. 150 (Supp. 1994).

(b) A verified petition, affidavit, document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this chapter, a tribunal of this state may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.³⁸⁴

This section contains special rules of evidence and assistance with discovery procedures which expand prior law.³⁸⁵ The

384. MINN. STAT. § 518C.316 (1994).

385. See RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.16 (1992)). According to the Minnesota Supreme Court, "If the action was based on a

Minnesota Legislature took the position in adopting this provision that interstate support disputes cannot be efficiently handled if Minnesota continued to rely upon traditional common law rules of evidence.³⁸⁶ Consequently, this section contains what the commentators to the model act characterize as "innovative methods for gathering evidence in interstate cases."³⁸⁷

The new rules are intended to eliminate potential hearsay problems in interstate litigation.³⁸⁸ The reason for this is that the out-of-state party and the party's witnesses usually do not appear in person at the UIFSA hearing.³⁸⁹ The United States Commission on Interstate Child Support believed these evidentiary provisions were crucial to facilitate establishment and enforcement of interstate disputes.³⁹⁰

Subsection (a) is self-evident in declaring that "the physical presence of the petitioner in a responding tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage."³⁹¹

Subsections (b) through (f) substantially expand on previous RURESA provisions.³⁹² Subsection (b) provides for the admis-

support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support," subject only to defenses available to an obligor with respect to paternity under Section 518C.18 or to a defendant in an action or a proceeding to enforce a foreign money judgment. *State ex rel. McDonnell v. McCutcheon*, 337 N.W.2d 645, 648 (Minn. 1983) (quoting MINN. STAT. § 518C.16 (1992)). The court held that while a foreign order is evidence that the obligor's relationship to the obligee gives rise to a duty to support, it does not compel a responding state to award the same level of support. *Id.* The philosophy exhibited by the court in this decision is counter to the new UIFSA provisions.

386. Prior law was governed by the Minnesota Rules of Evidence. See *infra* note 392.

387. UNIF. INTERSTATE FAMILY SUPPORT ACT § 316 cmt., 9 U.L.A. 151 (Supp. 1994).

388. *Id.*

389. *Id.*

390. BLUEPRINT FOR REFORM, *supra* note 2, at 234-35.

391. MINN. STAT. § 518C.316(a) (1994).

392. RURESA read as follows:

In any hearing for the civil enforcement of sections 518C.01 to 518C.36, the court is governed by the Minnesota rules of evidence. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to defenses available to an obligor with respect to paternity under section 518C.18 or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by interference by another obligee with rights of custody or visitation granted by a court.

sibility of a verified petition, affidavits, and documents that substantially comply with federally mandated forms. Subdivision (c) provides for the admissibility of a certified copy of the most recent record of child support payments.

Subsection (d) provides for the admissibility of copies of bills for parentage testing and for prenatal and postnatal health care of the mother and child, without the requirement of a traditional evidentiary foundation.³⁹³ Under the new provision, health care providers are not required to appear to testify that the bills are reasonable and associated with necessary treatment related to the birth of a child.³⁹⁴ Furthermore, there is no need to obtain affidavits or business records from the providers.³⁹⁵ Affidavits would, however, lend reliability to the submission of bills to the tribunal.

The problems inherent in understanding medical billing practices in the United States adds another layer of difficulty to this subsection. The prospect of numerous ill-equipped-to-understand obligors appearing to defend themselves pro se against the intricacies of medical billing practice is troubling.

Subsection (e) provides for the admissibility of documentary evidence transmitted from another state by telephone, telecopier, or other means that does not provide an original writing. Subsection (f) provides for the admissibility of testimony by telephone or audiovisual conference.

Subsection (g) outlines the consequences to an alleged obligor who asserts the Fifth Amendment privilege against self-incrimination. This provision allows the trier of fact to draw an adverse inference from the obligor's refusal, on Fifth Amendment grounds, to answer questions put to him or her at the UIFSA hearing. If one asserts the privilege of self-incrimination, the judge can rule in favor of the other party without further action. Minnesota has been one of the front-runners in reducing the protection some thought was given a

RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.16 (1992)).

393. The drafting committee felt that these costs would not be in dispute in most cases. UNIF. INTERSTATE FAMILY SUPPORT ACT § 316 cmt., 9 U.L.A. 151 (Supp. 1994).

394. *Id.*

395. *See id.*

citizen by this privilege.³⁹⁶

The spousal immunity defense does not apply to proceedings brought under Chapter 518C.³⁹⁷

17. Section 518C.317: Communications Between Tribunals

A tribunal of this state may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A tribunal of this state may furnish similar information by similar means to a tribunal of another state.³⁹⁸

This section anticipates broader cooperation between tribunals involved in an interstate support dispute.³⁹⁹

18. Section 518C.318: Assistance with Discovery

A tribunal of this state may:

- (1) request a tribunal of another state to assist in obtaining discovery; and
- (2) upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.⁴⁰⁰

This broad provision is intended to encourage interstate cooperation between the forum state and another state in the discovery process.⁴⁰¹

396. See *In re J.W.*, 415 N.W.2d 879, 883-84 (Minn. 1987) (holding that the privilege applies in a neglect proceeding but does not protect against the possible adverse consequences of a failure to undergo effective rehabilitative therapy); see also LA. REV. STAT. ANN. § 9:396A (West 1992) (if a party refuses testing, the court can resolve questions of paternity against that party); N.J. STAT. ANN. § 9:17-51(d) (West 1991) (a refusal to submit to testing allows the presumption that the test would have had an unfavorable result for the refusing party); 23 PA. CONS. STAT. ANN. § 5104(c) (1991) (if a party refuses to comply with paternity tests, the court can resolve it in favor of the other party).

397. See MINN. STAT. § 518C.316(h) (1994).

398. *Id.* § 518C.317.

399. UNIF. INTERSTATE FAMILY SUPPORT ACT § 317 cmt., 9 U.L.A. 152 (Supp. 1994).

400. MINN. STAT. § 518C.318 (1994).

401. UNIF. INTERSTATE FAMILY SUPPORT ACT § 318 cmt., 9 U.L.A. 152 (Supp. 1994).

19. Section 518C.319: Receipt and Disbursement of Payments

A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.⁴⁰²

This subsection “confirms the duty of the agency or tribunal to furnish payment information in an interstate dispute.”⁴⁰³

D. Section 518C.401: Petition to Establish Support Order

(a) If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state may issue a support order if:

- (1) the individual seeking the order resides in another state; or
- (2) the support enforcement agency seeking the order is located in another state.

(b) The tribunal may issue a temporary child support order if:

- (1) the respondent has signed a verified statement acknowledging parentage;
- (2) the respondent has been determined by or pursuant to law to be the parent; or
- (3) there is other clear and convincing evidence that the respondent is the child’s parent.

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to section 518C.305.⁴⁰⁴

This section gives Minnesota jurisdiction as a responding state to issue temporary and permanent support orders as long

402. MINN. STAT. § 518C.319 (1994).

403. UNIF. INTERSTATE FAMILY SUPPORT ACT § 319 cmt., 9 U.L.A. 152 (Supp. 1994).

404. MINN. STAT. § 518C.401 (1994).

as it has personal jurisdiction over the obligor.⁴⁰⁵ Such orders cannot be issued where an out-of-state tribunal has issued a support order and has continuing, exclusive jurisdiction over the matter.⁴⁰⁶ There is no requirement that an action for divorce or legal separation be initiated. A spouse may initiate a UIFSA action under certain circumstances, even though no action for divorce or separation has been commenced and there is no order regarding child custody or visitation.⁴⁰⁷

Where Minnesota has continuing, exclusive jurisdiction over the matter, the child support guidelines should be used to establish the amount of support.⁴⁰⁸

E. Direct Enforcement of Order of Another State Without Registration

1. Section 518C.501: Recognition of Income-Withholding Order of Another State

(a) An income-withholding order issued in another state may be sent by first class mail to the person or entity defined as the obligor's employer under section 518.611 or 518.613 without first filing a petition or comparable pleading or registering the order with a tribunal of this state. Upon receipt of the order, the employer shall:

- (1) treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state;
- (2) immediately provide a copy of the order to the obligor; and
- (3) distribute the funds as directed in the withholding order.

(b) An obligor may contest the validity or enforcement of an income-withholding order issued in another state in the same manner as if the order had been issued by a tribunal of this state. Section 518C.604 applies to the contest. The obligor shall give notice of the contest to any support enforcement

405. UNIF. INTERSTATE FAMILY SUPPORT ACT § 401 cmt., 9 U.L.A. 153 (Supp. 1994).

406. *Id.*

407. *See* England v. England, 337 N.W.2d 681, 683-84 (Minn. 1983) (awarding support via URESA even though no dissolution action had yet been brought).

408. *See* State *ex rel.* Meneley v. Meneley, 398 N.W.2d 28, 30 (Minn. Ct. App. 1986) (ruling that child support guidelines apply to RURESAs proceedings where obligee was receiving public assistance); Kusel v. Kusel, 361 N.W.2d 165, 167 (Minn. Ct. App. 1985) (ruling that Chapter 518 child support guidelines are applicable to RURESAs proceedings).

agency providing services to the obligee and to:

- (1) the person or agency designated to receive payments in the income-withholding order; or
- (2) if no person or agency is designated, the obligee.⁴⁰⁹

It is no longer necessary to register an order or file a pleading with the courts of this state in order to require a Minnesota employer to act under an income-withholding order from another state. This is viewed as a substantial improvement over RURESA, where the other state was required to send the order to the Minnesota Child Support Enforcement Unit, which then had to initiate a formal legal action to implement the order.⁴¹⁰

Subsection (b) incorporates the law regarding the defenses a Minnesota tribunal may consider in the interstate withholding context.⁴¹¹ As a general proposition, states have accepted that the only defense is one of "mistake of fact."⁴¹²

2. Section 518C.502: Administrative Enforcement of Orders

(a) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state. (b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.⁴¹³

409. MINN. STAT. § 518C.501 (1994).

410. See RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.09 (1992)).

411. UNIF. INTERSTATE FAMILY SUPPORT ACT § 501 cmt., 9 U.L.A. 154 (Supp. 1994).

412. *Id.* Mistake of fact apparently includes errors in the amount owed or the mistaken identity of the obligor. *Id.*

413. MINN. STAT. § 518C.502 (1994).

This section permits Minnesota to summarily enforce another state's support order through any administrative means available.⁴¹⁴ Under Subsection (a), any interested party in another state, including a private attorney, may forward a support order or income-withholding order to a Minnesota enforcement agency.⁴¹⁵

Subsection (b) directs that the enforcement agency in Minnesota use its normal administrative procedures to process the out-of-state order.⁴¹⁶ The purpose of this subsection is to avoid the need for a Minnesota employer to learn new procedures in order to comply with an out-of-state order.⁴¹⁷

F. Enforcement and Modification of Support Order After Registration

1. Section 518C.601: Registration of Order for Enforcement

A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement.⁴¹⁸

This section expands the procedures for registering a foreign support order.⁴¹⁹ The previous practice of initiating a new lawsuit in Minnesota for the express purpose of establishing a support order, despite the existence of an order in another state, is discouraged.⁴²⁰ It was felt that RURESA encouraged initiation of these suits, and the resulting multiple orders in different states created confusion.⁴²¹ Under UIFSA, only the existing order is to be enforced and then only if it was validly issued.⁴²² Consequently, registration should be used if an out-of-state order is to be enforced in Minnesota.⁴²³ Personal

414. UNIF. INTERSTATE FAMILY SUPPORT ACT § 502 cmt., 9 U.L.A. 155 (Supp. 1994).

415. *Id.*

416. *Id.*

417. *Id.*

418. MINN. STAT. § 518C.601 (1994).

419. UNIF. INTERSTATE FAMILY SUPPORT ACT § 601 cmt., 9 U.L.A. 156 (Supp. 1994).

420. *Id.*

421. *Id.*

422. *Id.* Minnesota can, however, modify the support order of another state, but only under very limited conditions. See MINN. STAT. §§ 518C.609-612 (1994).

423. UNIF. INTERSTATE FAMILY SUPPORT ACT § 601 cmt., 9 U.L.A. 156 (Supp. 1994); see also *State ex rel. McDonnell v. McCutcheon*, 337 N.W.2d 645, 650 (Minn. 1983)

jurisdiction over the obligor is, of course, required before a Minnesota court can enforce an out-of-state order.⁴²⁴

2. Section 518C.602: Procedure To Register Order for Enforcement

(a) A support order or income-withholding order of another state may be registered in this state by sending the following documents and information to the registering tribunal in this state:

- (1) a letter of transmittal to the tribunal requesting registration and enforcement;
- (2) two copies, including one certified copy, of all orders to be registered, including any modification of an order;
- (3) a sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;
- (4) the name of the obligor and, if known:
 - (i) the obligor's address and social security number;
 - (ii) the name and address of the obligor's employer and any other source of income of the obligor; and
 - (iii) a description and the location of property of the obligor in this state not exempt from execution; and
- (5) the name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.⁴²⁵

(holding that an obligee who seeks enforcement of an existing out-of-state support order and who has not first reduced it to judgment in the foreign state should register the order as provided in URESA).

424. MINN. STAT. § 518C.607(a)(1) (1994); *see also* Scott v. Scott, 492 N.W.2d 831, 834 (Minn. Ct. App. 1992) (ruling that a court must find personal jurisdiction before modifying or enforcing a registered order (citing Pinner v. Pinner, 234 S.E.2d 633, 636 (N.C. Ct. App. 1977))).

425. MINN. STAT. § 518C.602 (1994).

This section outlines the mechanics of registering another state's support order that is to be enforced by a Minnesota tribunal.⁴²⁶ These procedures differ little from those required under prior law.⁴²⁷

3. Section 518C.603: Effect of Registration for Enforcement

(a) A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.

(b) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(c) Except as otherwise provided in sections 518C.601 to 518C.612, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.⁴²⁸

Although registration under UIFSA is almost identical to that required under prior Minnesota law, the intent of registration is "radically different."⁴²⁹ Under Subsection (a), once an out-of-state order is registered in Minnesota, the order remains an order of the out-of-state tribunal that is to be enforced by Minnesota.⁴³⁰ The registered order remains subject to the continuing, exclusive jurisdiction of the other state if the requirements for that jurisdiction remain intact.⁴³¹

Subsection (b) changes prior Minnesota law, which specifically permitted an order to be reopened, stayed, or vacated.⁴³² These procedures are not available with UIFSA.⁴³³ Under UIFSA, Minnesota is enforcing an order of another state,

426. UNIF. INTERSTATE FAMILY SUPPORT ACT § 602 cmt., 9 U.L.A. 157 (Supp. 1994).

427. See RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.24 (1992) (RURESA registration procedure)).

428. MINN. STAT. § 518C.603 (1994).

429. UNIF. INTERSTATE FAMILY SUPPORT ACT § 603 cmt., 9 U.L.A. 157 (Supp. 1994).

430. *Id.*

431. *Id.* See also MINN. STAT. § 518C.205 (1994) (requirements of continuing, exclusive jurisdiction).

432. See RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.25, subd. 1 (1992)).

433. UNIF. INTERSTATE FAMILY SUPPORT ACT § 603 cmt., 9 U.L.A. 157 (Supp. 1994).

not one that has been issued by a Minnesota tribunal.

Subsection (c) mandates that a Minnesota tribunal enforce the out-of-state support order. This changes prior law, which stated that a "registered order shall be treated in the same manner as a support order issued by a court of this state."⁴³⁴ Minnesota cannot modify a properly registered out-of-state order except under the limited conditions set forth in Sections 518C.601 to 518C.612.

4. Section 518C.604: Choice of Law

(a) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

(b) In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies.⁴³⁵

The purpose of Subsection (a) is to identify certain situations where Minnesota law does not apply to an interstate enforcement proceeding.⁴³⁶ For example, Minnesota must enforce a child support order of a state that requires support to age twenty-one, even though under Minnesota law support usually ends at age eighteen.⁴³⁷

Subsection (b) declares that in the interstate support context, Minnesota must apply the longer of any two state statutes of limitations. The purpose of the provision is to prevent obligors from selecting a state that has a shorter statute of limitations than the state that initially issued the order.⁴³⁸

434. RURES, *supra* note 15 (formerly codified at MINN. STAT. § 518C.25, subd. 1 (1992)).

435. MINN. STAT. § 518C.604 (1994).

436. UNIF. INTERSTATE FAMILY SUPPORT ACT § 604 cmt., 9 U.L.A. 158 (Supp. 1994). The Minnesota Supreme Court has held that in a URESA proceeding, the Minnesota trial court was not bound by an earlier New York order and was required to apply Minnesota law. *State ex rel. McDonnell v. McCutcheon*, 337 N.W.2d 645, 648 (Minn. 1983). UIFSA is intended to preclude such rulings. UNIF. INTERSTATE FAMILY SUPPORT ACT § 604 cmt., 9 U.L.A. 158 (Supp. 1994).

437. A child is defined by Minnesota law "as an individual under 18 years of age, an individual under age 20 who is still attending secondary school, or an individual who, by reason of physical or mental condition, is incapable of self-support." MINN. STAT. § 518.54, subd. 2 (1994).

438. UNIF. INTERSTATE FAMILY SUPPORT ACT § 604 cmt., 9 U.L.A. 158 (Supp. 1994).

For example, if an obligor accumulated a large arrearage over a long period of time, it was felt that the obligor should not gain an undue benefit, which might reduce the amount of the arrearage, from a choice of residence.⁴³⁹

5. Section 518C.605: Notice of Registration of Order

(a) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. Notice must be given by certified or registered mail or by any means of personal service authorized by the law of this state. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) The notice must inform the nonregistering party:

(1) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) that a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after the date of mailing or personal service of the notice;

(3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

(4) of the amount of any alleged arrearages.

(c) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to section 518.611 or 518.613.⁴⁴⁰

Subsection (a) mandates that the nonregistering party be notified when an out-of-state support order or income-withholding order is registered in Minnesota.⁴⁴¹ Subsection (b) provides that the nonregistering party be informed of the effect of registration.⁴⁴² As noted earlier, for a properly registered order to be enforceable, Minnesota must possess personal

439. *Id.*

440. MINN. STAT. § 518C.605 (1994).

441. UNIF. INTERSTATE FAMILY SUPPORT ACT § 605 cmt., 9 U.L.A. 159 (Supp. 1994).

442. *Id.*

jurisdiction over the obligor.⁴⁴³

6. *Section 518C.606: Procedure to Contest Validity or Enforcement of Registered Order*

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within 20 days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 518C.607.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties by first class mail of the date, time, and place of the hearing.⁴⁴⁴

Subsection (a) substantially alters prior law.⁴⁴⁵ First, it allows either an obligor or an obligee to seek registration of a support order in Minnesota.⁴⁴⁶ Second, it does not allow a challenger to attack the fundamental provisions of the registered order in Minnesota.⁴⁴⁷ To do that, the challenger must return to the state that originally issued the order.⁴⁴⁸ Furthermore, challengers are limited by the laws of the issuing state.⁴⁴⁹ Defenses that may be heard by a Minnesota tribunal include lack of personal jurisdiction, payment of support, or termination of support obligation.⁴⁵⁰

443. See *supra* note 424 and accompanying text.

444. MINN. STAT. § 518C.606 (1994).

445. UNIF. INTERSTATE FAMILY SUPPORT ACT § 606 cmt., 9 U.L.A. 160 (Supp. 1994) (stating that this subsection is "philosophically very different" from previous law). Compare MINN. STAT. § 518C.606 (1994) with RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.25 (1992)).

446. UNIF. INTERSTATE FAMILY SUPPORT ACT § 606 cmt., 9 U.L.A. 160 (Supp. 1994).

447. *Id.*

448. *Id.*

449. *Id.*

450. See MINN. STAT. § 518C.607 (1994); UNIF. INTERSTATE FAMILY SUPPORT ACT § 606 cmt., 9 U.L.A. 160 (Supp. 1994). Custody or visitation concerns cannot be raised

Subsection (b) precludes an untimely contest.⁴⁵¹ Subsection (c) mandates that a Minnesota tribunal conduct a hearing if the nonregistering party contests the registration.⁴⁵²

7. *Section 518C.607: Contest of Registration or Enforcement*

(a) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

- (1) the issuing tribunal lacked personal jurisdiction over the contesting party;
- (2) the order was obtained by fraud;
- (3) the order has been vacated, suspended, or modified by a later order;
- (4) the issuing tribunal has stayed the order pending appeal;
- (5) there is a defense under the law of this state to the remedy sought;
- (6) full or partial payment has been made; or
- (7) the statute of limitation under section 518C.604 precludes enforcement of some or all of the arrearages.

(b) If a party presents evidence establishing a full or partial defense under paragraph (a), a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under paragraph (a) to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.⁴⁵³

Subsection (a) places the burden on the nonregistering party to assert any of the listed defenses that exist to the registration of a support order.⁴⁵⁴ Subsection (c) mandates

as a defense or counterclaim in proceedings under RURESA. *England v. England*, 337 N.W.2d 681, 684 (Minn. 1983).

451. UNIF. INTERSTATE FAMILY SUPPORT ACT § 606 cmt., 9 U.L.A. 160 (Supp. 1994).

452. *Id.* Federal regulations govern the allowable time in which a Title IV-D case can be attacked. *Id.* (citing 42 U.S.C. § 666(b) (1988)).

453. MINN. STAT. § 518C.607 (1994).

454. UNIF. INTERSTATE FAMILY SUPPORT ACT § 607 cmt., 9 U.L.A. 161 (Supp. 1994).

that an order be enforced where no defense is established.

8. *Section 518C.608: Confirmed Order*

If a contesting party has received notice of registration under section 518C.605, confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order based upon facts that were known by the contesting party at the time of registration with respect to any matter that could have been asserted at the time of registration.⁴⁵⁵

Under this section, confirmation of a support order may result from a failure to contest the order or an unsuccessful contest.⁴⁵⁶ Once the order is properly registered, a party cannot later raise an issue that could have been raised at the hearing.⁴⁵⁷

9. *Section 518C.609: Procedure to Register Child Support Order of Another State for Modification*

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in sections 518C.601 to 518C.604 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.⁴⁵⁸

Sections 518C.609 through 518C.612 deal with the limited conditions under which Minnesota may modify a support order issued in another state. It should be noted that as long as the issuing state maintains continuing, exclusive jurisdiction over its

455. MINN. STAT. § 518C.608 (1994).

456. UNIF. INTERSTATE FAMILY SUPPORT ACT § 608 cmt., 9 U.L.A. 161, 162 (Supp. 1994).

457. *Id.* The registration process, however, does not waive a challenge to the personal jurisdiction of the court. *Scott v. Scott*, 492 N.W.2d 831, 833 (Minn. Ct. App. 1992). *See also* *Chapman v. Chapman*, 252 Cal. Rptr. 359, 362 (Cal. Ct. App. 1988) (holding registration of order does not preclude obligor from later contesting amount of unpaid support).

458. MINN. STAT. § 518C.609 (1994).

order, Minnesota is precluded from modifying it.⁴⁵⁹ It is only when the issuing state no longer has a "sufficient interest" in the action that Minnesota may modify the existing order.⁴⁶⁰ A "sufficient interest" is lost when neither the minor child nor any of the parties live in the issuing state.⁴⁶¹ This is a substantial change from prior law.⁴⁶²

A party wishing to register another state's support order in Minnesota so that the order can be modified must both comply with the pleading requirements found in Section 518C.311 and follow the registration procedures set forth in Section 518C.602.⁴⁶³ Minnesota must, of course, have personal jurisdiction over the parties to the action if a modification action is to go forward.⁴⁶⁴

10. Section 518C.610: Effect of Registration for Modification

A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of section 518C.611 have been met.⁴⁶⁵

The power to modify a child support order of another jurisdiction is sharply curtailed by Section 518C.611. However, if an order is modified, it may be enforced in the same manner as a support order registered for the purposes of enforcement.⁴⁶⁶

11. Section 518C.611: Modification of Child Support Order of Another State

(a) After a child support order issued in another state has been registered in this state, the responding tribunal of this

459. UNIF. INTERSTATE FAMILY SUPPORT ACT § 609 cmt., 9 U.L.A. 162 (Supp. 1994).

460. *Id.*

461. *Id.*

462. Under prior law, the court held that the full faith and credit clause did not preclude Minnesota from modifying future child support installments required by a Wisconsin divorce decree. *Arora v. Arora*, 351 N.W.2d 668, 671 (Minn. Ct. App. 1984).

463. UNIF. INTERSTATE FAMILY SUPPORT ACT § 609 cmt., 9 U.L.A. 162 (Supp. 1994).

464. *Arora*, 351 N.W.2d at 670.

465. MINN. STAT. § 518C.610 (1994).

466. UNIF. INTERSTATE FAMILY SUPPORT ACT § 610 cmt., 9 U.L.A. 163 (Supp. 1994).

state may modify that order only if, after notice and hearing, it finds that:

- (1) the following requirements are met:
 - (i) the child, the individual obligee, and the obligor do not reside in the issuing state;
 - (ii) a petitioner who is a nonresident of this state seeks modification; and
 - (iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or
 - (2) an individual party or the child is subject to the personal jurisdiction of the tribunal and all of the individual parties have filed a written consent in the issuing tribunal providing that a tribunal of this state may modify the support order and assume continuing, exclusive jurisdiction over the order.
- (b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.
- (c) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state.
- (d) On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.
- (e) Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that earlier order has been registered.⁴⁶⁷

This section sets forth more restrictive requirements for modifying child support orders than found in prior law.⁴⁶⁸ Minnesota may modify an out-of-state court order only if certain conditions are met.⁴⁶⁹ As noted earlier, the continuing, exclu-

467. MINN. STAT. § 518C.611 (1994).

468. UNIF. INTERSTATE FAMILY SUPPORT ACT § 611 cmt., 9 U.L.A. 163, 163-64 (Supp. 1994). Compare MINN. STAT. § 518C.611 (1994) with RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.25 (1992) (effect of registration)).

469. UNIF. INTERSTATE FAMILY SUPPORT ACT § 611 cmt., 9 U.L.A. 163, 164 (Supp. 1994).

sive jurisdiction of the out-of-state tribunal remains intact as long as one party or the child continues to reside there.⁴⁷⁰ If neither a party nor a child live in the issuing state, the original order remains in effect until it is modified.⁴⁷¹

Subsection (a)(1) requires that the petitioner be a nonresident of Minnesota if modification is sought here. The respondent must also be subject to the personal jurisdiction of Minnesota. This prevents a litigant from choosing to seek modification in a local court to the disadvantage of the other party.⁴⁷²

Subsection (a) alters the traditional view of a state's power over nonresidents. Traditionally, anyone properly served with process within the boundaries of a state is subject to the jurisdiction of the state's courts.⁴⁷³ Under Subsection (a), however, an obligor who is in Minnesota to visit his or her children cannot be served with a modification motion, if a valid, out-of-state order has been registered in this state.⁴⁷⁴

Similarly, an obligee who seeks to modify or enforce an order involving a Minnesota obligor cannot be made subject to a cross-motion to modify custody or visitation because the issuing state lost its continuing, exclusive jurisdiction over the support order.⁴⁷⁵ The obligor is required to bring the motion in a state other than Minnesota, if the obligor lives in Minnesota.⁴⁷⁶ If both parties have left the issuing state and now reside in Minnesota, this section is not applicable.⁴⁷⁷

The parties are allowed by Subsection (a)(2) to terminate the continuing jurisdiction of the issuing state by agreement, which must be filed with the issuing tribunal.⁴⁷⁸

Subsection (b) allows Minnesota to modify a support order

470. *Id.* This is the standard used by the federal Parental Kidnapping Prevention Act. *Id.* (citing 28 U.S.C. § 1738A(d)).

471. UNIF. INTERSTATE FAMILY SUPPORT ACT § 611 cmt., 9 U.L.A. 163, 164 (Supp. 1994).

472. *Id.*

473. *See* *Burnham v. Superior Court*, 495 U.S. 604, 610 (1990).

474. UNIF. INTERSTATE FAMILY SUPPORT ACT § 611 cmt., 9 U.L.A. 163, 164 (Supp. 1994). The obligee can only bring the motion to modify in a state (1) in which the obligee is not a resident and (2) that has personal jurisdiction over the obligor. *Id.*

475. *Id.*

476. *Id.* Most likely the obligor would bring the motion in the obligee's home state. *Id.*

477. *Id.*

478. *Id.*

if the issuing state has lost continuing, exclusive jurisdiction.⁴⁷⁹ Subsection (c), however, prevents Minnesota from modifying any aspect of the out-of-state order that is in itself nonmodifiable.⁴⁸⁰

Once an order is modified by Minnesota, this state becomes the one-order state to be recognized by all UIFSA states.⁴⁸¹ Subsection (e) provides for notice to the original issuing state, once Minnesota has modified a support order.

An analysis of *Scott v. Scott*⁴⁸² illustrates the importance of this section. In *Scott*, the obligee had relocated to Minnesota after the couple's marriage was dissolved in Arizona.⁴⁸³ Following the dissolution, the obligor was in Minnesota on five occasions.⁴⁸⁴

The ex-wife registered the Arizona decree in Washington County, Minnesota, and simultaneously filed a motion for support modification.⁴⁸⁵ Notice of the filing and the modification action were given to the obligor by the Washington County Court Administrator.⁴⁸⁶ When the obligor failed to vacate the registration within the statutorily prescribed twenty-day period, the trial court concluded he had waived any challenge to the order, including the modification action, and went ahead and modified the child support order.⁴⁸⁷ The Minnesota Court of Appeals reversed the modification decision, finding that the obligor did not waive the requirement of personal jurisdiction when he failed to challenge the filing.⁴⁸⁸ The court ruled that there was no waiver.⁴⁸⁹

479. *Id.* at 165.

480. *Id.* For example, an out-of-state order may require support until the child reaches adulthood, defined as age 21 in the issuing state, while adulthood in Minnesota, the modifying state, is 18. The age of support established by the issuing state is controlling. *See id.*

481. *Id.*

482. 492 N.W.2d 831 (Minn. Ct. App. 1992).

483. *Scott v. Scott*, 492 N.W.2d at 832.

484. *Id.* at 833. The obligor was in Minnesota briefly in 1986, 1987, and 1988 to pick up his daughter for visitation. *Id.* In 1990 he had a six-hour layover at the Minneapolis/St. Paul airport. *Id.* The obligor's last contacts, in June 1991, were to contest his ex-wife's custody modification motion and to pick up his daughter for visitation. *Id.*

485. *Id.*

486. *Id.*

487. *Id.*

488. *Id.* at 834.

489. *Id.*

In its opinion, the court applied the reasoning of the North Carolina Court of Appeals, which had distinguished between registration and enforcement of a foreign support order in construing identical RURESA provisions.⁴⁹⁰ In *Pinner v. Pinner*,⁴⁹¹ the North Carolina court held that personal jurisdiction is not necessary for registration of the foreign support order under RURESA.⁴⁹² The *Pinner* court reasoned that the act of registration "does not prejudice any rights of the obligor; it merely changes the status of the foreign support order by allowing it to be treated the same as a support order issued by a court [of the registering state]."⁴⁹³ However, the *Pinner* court said that when the obligee requests modification or enforcement of the registered order, a court must then determine whether jurisdiction exists over the person or property of the obligor.⁴⁹⁴

The *Scott* court held that an obligor is not required to object to the court's jurisdiction to modify a foreign support order in a proceeding to register the order under Minnesota Statute Sections 518C.22 to 518C.25 (RURESA) and concluded that the obligor had properly raised the jurisdictional challenge in his motion to dismiss the support modification proceeding.⁴⁹⁵ The court said that "[t]he purpose of the proceeding to vacate registration of the foreign support order is to contest the original or continuing validity of the foreign support order itself."⁴⁹⁶ The court noted that the decision did not deprive the ex-wife of a remedy.⁴⁹⁷ Under RURESA, she could bring the action in a state with personal jurisdiction over the obligor.⁴⁹⁸

The impact of Section 611 on the traditional bases of jurisdiction is startling. For example, assume a situation where a couple is divorced in Arizona and that state establishes child

490. *Id.* (citing *Pinner v. Pinner*, 234 S.E.2d 633, 636 (N.C. Ct. App. 1977)). The *Pinner* view has been adopted by several other jurisdictions. *Id.* (citing *Lagerwey v. Lagerwey*, 681 P.2d 309, 311 (Alaska 1984); *Wilson v. Ransom*, 446 N.W.2d 6, 9-10 (Neb. 1989); *Stephens v. Stephens*, 331 S.E.2d 484, 489 (Va. 1985); *Davanis v. Davanis*, 392 N.W.2d 108, 112 (Wis. Ct. App. 1986)).

491. 234 S.E.2d 633 (N.C. Ct. App. 1977).

492. *Pinner v. Pinner*, 234 S.E.2d at 636 (N.C. Ct. App. 1977).

493. *Id.*

494. *Id.*

495. *Scott v. Scott*, 492 N.W.2d 831, 834 (Minn. Ct. App. 1992).

496. *Id.* (citing *Aron v. Aron*, 274 Cal. Rptr. 357, 360 (Cal. Ct. App. 1990)).

497. *Id.* at 831 n.1.

498. *Id.* (citing *Ferguson v. Ferguson*, 411 N.W.2d 238, 240 (Minn. Ct. App. 1987)).

support. Assume the obligor moves to Minnesota where the Arizona judgment is properly registered, and assume the obligee visits Minnesota and is personally served with a motion to modify child support. Although such service is consistent with the jurisdictional requisites of *Burnham v. Superior Court*,⁴⁹⁹ the modification motion cannot be heard in Minnesota. The reason is that the motion to modify fails to fulfill the requirement of being brought by "a petitioner who is a nonresident of the state."⁵⁰⁰ The obligor is required to bring the modification motion in Arizona. The provision is not applicable, of course, if both parties are living in the forum state.

There are significant jurisdictional differences in a child support modification matter brought under UIFSA and one in which the federal Parental Kidnapping Prevention Act is invoked. The federal Parental Kidnapping Prevention Act provides that the court of continuing, exclusive jurisdiction may "decline" jurisdiction.⁵⁰¹ The privilege of declining jurisdiction is not permitted under UIFSA.⁵⁰²

12. Section 518C.612: Recognition of Order Modified in Another State

A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state which assumed jurisdiction pursuant to a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall:

- (1) enforce the order that was modified only as to amounts accruing before the modification;
- (2) enforce only nonmodifiable aspects of that order;
- (3) provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and
- (4) recognize the modifying order of the other state, upon registration, for the purpose of enforcement.⁵⁰³

499. 495 U.S. 604, 619 (1990).

500. MINN. STAT. § 518C.611(a)(1)(ii) (1994).

501. UNIF. INTERSTATE FAMILY SUPPORT ACT § 611 cmt., 9 U.L.A. 163, 165 (Supp. 1994) (citing 28 U.S.C. § 1738A (1988)). Similar provisions can be found in Section 14 of the Uniform Child Custody Jurisdiction Act. *Id.*

502. *Id.*

503. MINN. STAT. § 518C.612 (1994).

This section provides that Minnesota give deference to a support order of another state if a Minnesota order was modified there. Minnesota retains power to deal with violations of an order that occurred before the order was modified.

G. Section 518C.701: Proceeding to Determine Parentage

(a) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law substantially similar to this chapter, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

(b) In a proceeding to determine parentage, a responding tribunal of this state shall apply the parentage act, sections 257.51 to 257.74, and the rules of this state on choice of law.⁵⁰⁴

This section permits a parentage action in the interstate context.⁵⁰⁵ The parentage action does not need to be joined with a support claim, and either the mother or the alleged biological father may bring the action.⁵⁰⁶ The use of the word "petitioner" was intentional and conveys the gender-neutral position of this section.⁵⁰⁷ It is intended to encourage fathers to seek establishment of their parentage with their offspring.⁵⁰⁸

Subsection (b) requires that parentage "shall" be determined, which is a change from previous law. RURESA authorized a responding court to take such action but did not require

504. *Id.* § 518C.701.

505. UNIF. INTERSTATE FAMILY SUPPORT ACT § 701 cmt., 9 U.L.A. 166 (Supp. 1994).

506. *Id.* The party bringing the action must, of course, meet the criteria established in MINN. STAT. § 257.57 (1994) (determining the father and child relationship, who may bring an action, and when an action may be brought).

507. Sampson, *supra* note 239, at 166 n.163.

508. *Id.* This provision does not necessarily eliminate the kind of difficulties discussed in *Markert v. Behm*, where a statute barred the putative father from bringing a paternity action unless he first married the mother, acknowledged paternity, or voluntarily promised in writing to support the child. *Markert v. Behm*, 394 N.W.2d 239, 242-43 (Minn. Ct. App. 1986). The court justified this statutory provision on the ground it was needed to protect minor children from the stigma and distress that could result if an alleged putative father were granted standing. *Id.* at 244. The provision was held not to violate the equal protection clause because the putative father's interest in asserting paternity is not a protected liberty interest under the due process clause. *Id.* at 243-44.

it to do so.⁵⁰⁹

The question of whether the minor child and all counties that might be involved in the dispute should be joined in a single action is left to the interpretation of Minnesota Statutes Sections 257.59 and 257.60.⁵¹⁰ However, efficiency and basic fairness dictate that they should. For example, in *County of Dakota v. Hendrickson*,⁵¹¹ the court held that dismissal of a parentage action brought by the minor child's mother and the county was not res judicata as to the minor child's independent parentage action or as to interests of another county seeking reimbursement for support spent on the child's behalf following dismissal of the mother's suit.⁵¹² In *Johnson v. Hunter*,⁵¹³ the court held that an unrepresented minor child is not in privity with its mother for res judicata purposes when a paternity action is brought to determine the child's father.⁵¹⁴ In another

509. The RURESA section read:

If an obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.18 (1992)).

510. MINN. STAT. §§ 257.59-60 (1994).

511. 482 N.W.2d 516 (Minn. Ct. App.), *rev. denied*, 482 N.W.2d 516 (Minn. 1992).

512. *County of Dakota v. Hendrickson*, 482 N.W.2d at 518.

513. 447 N.W.2d 871 (Minn. 1989).

514. *Johnson v. Hunter*, 447 N.W.2d at 876-77. *See also* *McMenomy v. Ryden*, 276 Minn. 55, 59, 148 N.W.2d 804, 807 (1967) (asserting that privity must be determined by the facts of each case); *State v. E.A.H.*, 246 Minn. 299, 304-05, 75 N.W.2d 195, 199-200 (1956) (contending that mother has standing to appeal judgment of nonpaternity in action brought by state); *State v. Sax*, 231 Minn. 1, 8, 42 N.W.2d 680, 684-85 (1950) (distinguishing that mother is party to illegitimacy proceedings even if action is brought by state); *Ex parte Snow*, 508 So.2d 266, 267-68 (Ala. 1987) (finding that mother and child are not "substantially identical parties"; therefore all elements required for res judicata are not met); *Maller v. Cohen*, 531 N.E.2d 1029, 1031 (Ill. App. Ct. 1988), *cert. denied*, 537 N.E.2d 811 (Ill. 1989) (finding that unwed mother and her child have "difference of interests" in filing independent paternity actions); *Spada v. Pauley*, 385 N.W.2d 746, 750 (Mich. Ct. App.), *cert. denied*, 389 N.W.2d 85 (Mich. 1986) (finding that child's interests are broader than just securing support); *Seattle ex rel. Sullivan v. Beasley*, 308 S.E.2d 288, 290-91 (N.C. 1983) (asserting that privity denotes a mutual or successive relationship to the same rights of property and does not ordinarily arise from the relationship between parent and child; this privity does not exist to bar a child's subsequent suit where no such concurrent relationship to the same right exists); *Commonwealth ex rel. Gray v. Johnson*, 376 S.E.2d 787, 790 (Va. Ct. App. 1989) (holding that child is not bound by paternity determination in action brought by mother unless child is named a party, represented by a guardian ad litem, or given adequate opportunity to litigate issue).

decision, *Nicholson v. Maack*,⁵¹⁵ the court held that the fact that the putative father's action to establish paternity is time barred is not a reason to prevent appointment of a guardian ad litem for the minor child if the paternity action is deemed in the child's best interests.⁵¹⁶

H. Interstate Rendition

1. Section 518C.801: Grounds for Rendition

(a) For purposes of this article, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

(b) The governor of this state may:

(1) demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(2) on the demand by the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.⁵¹⁷

This section is virtually identical to prior law.⁵¹⁸ Subsection (3) of the former Act created some theoretical discussion but few decisions.⁵¹⁹

515. 400 N.W.2d 160 (Minn. Ct. App. 1987).

516. *Nicholson v. Maack*, 400 N.W.2d at 165.

517. MINN. STAT. § 518C.801 (1994).

518. See RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.31 (1992)).

519. See *In re King*, 474 P.2d 983, 991 (Cal. 1970), *cert. denied*, 403 U.S. 931 (1971) (holding a provision of the welfare statute that punished nonsupporting out-of-state fathers as felons as unconstitutional because it violated equal protection); see also Daniel L. Rotenberg, *Extraterritorial Legislative Jurisdiction and the State Criminal Law*, 38 TEX. L. REV. 763, 784-87 (1960) (discussing the permissible extent to which the state may recognize matters taking place beyond its territorial boundaries).

2. *Section 518C.802: Conditions of Rendition*

(a) Before making demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least 60 days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

(b) If, under this chapter or a law substantially similar to this chapter, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.⁵²⁰

This section is virtually identical to previous law.⁵²¹

I. *Section 518C.901: Uniformity of Application and Construction*

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.⁵²²

This provision makes no significant substantive changes

520. MINN. STAT. § 518C.802 (1994).

521. See RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.32 (1992) (conditions of interstate rendition)).

522. MINN. STAT. § 518C.901 (1994).

from prior law.⁵²³

V. FEDERAL INTERVENTION

Now that Minnesota has passed its version of UIFSA and surrounded it with a cadre of administrative and enforcement statutes, the question remains whether Minnesota's effort will stem the federal legislative tide that has been gaining such strong momentum since the late 1980s.

The impetus for federal intervention began twenty years ago when Congress began to move aggressively into the child support arena. The child support system moved from a solely state-law-based system to one that was a federally imposed system of state laws, complemented by federal law, and enforced by both state and federal governments.⁵²⁴

One can point to the passage of Title IV-D, added to the Social Security Act in 1975,⁵²⁵ as the real beginning of serious federalism in the child support area. In Title IV-D, Congress mandated that every state child support system provide enforcement services to custodial parents and their children.⁵²⁶ Title IV-D also mandated free assistance to AFDC recipients.⁵²⁷ Any other parent was eligible for IV-D services, regardless of income, upon completion of a written application and payment of a fee not exceeding twenty-five dollars.⁵²⁸ As an incentive, the federal government, through its reimbursement plan under Title IV-D, agreed to pay the states for most of the costs associated with these systems.⁵²⁹

By the late 1970s, the impact of Title IV-D was apparent as virtually all states had some form of a statewide child support enforcement agency.⁵³⁰ State performance, however, was

523. See RURESA, *supra* note 15 (formerly codified at MINN. STAT. § 518C.35 (1992)).

524. Allen, *supra* note 52, at 661.

525. See Social Services Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337, 2351 (1975) (codified in part at 42 U.S.C. §§ 651-655 (1988)).

526. Allen, *supra* note 52, at 660. See 42 U.S.C. § 654 (1988).

527. Allen, *supra* note 52, at 660. See 42 U.S.C. § 654 (1988).

528. Haynes, *supra* note 50, at 693. See 42 U.S.C. § 654 (1988).

529. Allen, *supra* note 52, at 660. See 42 U.S.C. § 655 (1988). Title IV-D also created the federal Office of Child Support Enforcement and mandated that states establish state child support offices. Haynes, *supra* note 50, at 693. The program provided various child support services: location of absent parents, parentage establishment, establishment and enforcement of support, and modification of support. *Id.*

530. Allen, *supra* note 52, at 660.

judged to be poor.⁵³¹ The state systems were dissimilar and lack of uniformity made enforcement of support orders, or their establishment, unwieldy.⁵³² Congress, in an effort to bring greater uniformity to the process and more effective collection of support, passed child support enforcement legislation in 1984, 1986, and 1988.⁵³³ The federal government required that states establish income withholding of child support payments, create child support guidelines, allow administrative or quasi-judicial agencies to litigate support cases, extend the period of time in which paternity could be established, permit liens and garnishments of obligors' income, and allow states to capture state tax refunds for arrears.⁵³⁴ Congress also authorized the interception of federal income tax refunds for recovery of arrears, established the federal Parent Locator System, and authorized IRS full-service collection of particularly difficult cases.⁵³⁵

As the problem continued to escalate, Congress responded with additional legislation. Major support efforts, such as those found in the Omnibus Budget Reconciliation Act of 1993⁵³⁶ (OBRA 93), attempted to create effective mechanisms for obtaining support. Under OBRA 93, the states were required to provide a simplified civil process for the voluntary establishment of paternity that was available both in and out of the hospital,⁵³⁷ the most likely time when many fathers of a child born out-of-wedlock could be identified. These procedures were in place by January 1, 1995.⁵³⁸

Congress also established the Qualified Medical Child Support Order (QMCSO), a mechanism for improving health insurance for children following divorce or born to parents out-of-wedlock.⁵³⁹

531. *Id.*

532. *Id.*

533. See *supra* text accompanying notes 56-63.

534. Allen, *supra* note 52, at 660. See 42 U.S.C. § 666(a)(1)-(10) (1988).

535. Allen, *supra* note 52, at 660. See 42 U.S.C. §§ 664, 653, 652(b) (1988).

536. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (1993) (codified as amended in scattered sections of 42 U.S.C.A. §§ 666-1396 (West Supp. 1995)).

537. Allen, *supra* note 52, at 661.

538. *Id.*

539. A QMCSO is similar to a Qualified Domestic Relations Order (QDRO) and must contain the information required by federal law and be approved by the plan administrator. *Id.* at 662.

Altogether, fifty-four separate jurisdictions continue to have primary responsibility for child support, including the fifty states, the territories, and the District of Columbia.⁵⁴⁰ Criticism remains, however, that there exists a patchwork of varying methods, procedures, and uneven results.⁵⁴¹ In Michigan, the governor seems to have thrown up his hands at the support problem, asking that it be completely turned over to the federal government.⁵⁴² Michigan remains alone in this view of federal rule in the support area.

One effort aimed at federalization of support was made by Congressmen Downey and Hyde.⁵⁴³ They proposed that state trial courts and agencies retain paternity jurisdiction with an emphasis on establishing paternity through nonadversarial means.⁵⁴⁴ State courts and agencies would also continue to establish initial child support orders; however, all support orders would be created by application of national child support guidelines.⁵⁴⁵ An obligor aggrieved by a support order could appeal to a federal administrative agency such as the Social Security Administration.⁵⁴⁶ The same federal agency would handle modification requests but would determine whether a change should be made by primarily relying on an individual's income tax returns.⁵⁴⁷ Support enforcement and collection would be handled by the IRS.⁵⁴⁸

Although federalizing aspects of child support may have some advantages, there are serious concerns that weigh heavily

540. *Id.* at 660.

541. *See id.*

542. *Id.* According to Michigan's Governor Engler,

Interstate Child Support is operated by each state. It is the most difficult part of the Child Support Program to operate. Because the program deals with other states' laws and enforcement staff, performance varies dramatically from state to state. We propose that the federal government take over Michigan's Interstate Support obligation. No other state in the nation has proposed such a radical change in operations. Under this proposal DSS and the Internal Revenue Service (IRS) would enter into a pilot project agreement to allow the testing of a federal takeover of this portion of the program.

Id. at 663 n.22 (quoting a report by Governor Engler entitled *To Strengthen Michigan Families—1994*).

543. Haynes, *supra* note 50, at 695. *See* H.R. 773, 103d Cong., 1st Sess. (1993); S. 967, 103d Cong., 1st Sess. (1993).

544. Haynes, *supra* note 50, at 695.

545. *Id.*

546. *Id.*

547. *Id.*

548. *Id.*

against such an overhaul.⁵⁴⁹ Federalization may result in an unnecessary fragmentation of domestic cases between state and federal judicial systems.⁵⁵⁰ With one system handling a divorce or parentage and another system handling support issues that are intimately related to the latter, confusion, overlap, and sweeping inefficiency might well result.

Problems in locating an obligor can in many cases be better handled at the state level. The federal Office of Child Support Enforcement operates a Parent Locator Service that for child support purposes has access to records of six federal agencies.⁵⁵¹ However, much of the agency information is dated because it requires only quarterly or annual reporting.⁵⁵² State sources of information, such as the Department of Revenue, Department of Motor Vehicles, credit bureau reports, property listings, and quarterly wage statement, are probably much more up to date.⁵⁵³

Another concern, especially if the Internal Revenue Service becomes the primary enforcement agency, is whether IRS agents, who view tax enforcement as their main priority, would be any more responsive to the support problem than are present state workers.⁵⁵⁴ An additional concern is whether a federal agency would distribute collected support any faster than one that is state-based.⁵⁵⁵

Given the efforts of states like Minnesota to adopt a uniform act, despite some of its questionable sections, it would be surprising to find the federal government going much further in the immediate future. The federal government, along with the states, will need another decade of experience with UIFSA before a reasoned judgment regarding its efficacy can be made. However, if after this final testing period, the states have failed to show substantial progress in child support collections, it is a good bet that Congress will federalize the entire support effort.

549. *Id.* at 695-96.

550. *Id.* at 696.

551. *Id.*

552. *Id.*

553. *Id.*

554. *Id.*

555. *Id.*

VI. CONCLUSION

The Uniform Interstate Family Support Act (UIFSA) is Minnesota's latest attempt to deal with the child support collection problem. Based upon the model act promulgated in 1992 by the National Conference of Commissioners on Uniform State Laws, UIFSA replaces and expands RURESA, its predecessor child support collection statute. The Act contains many new and innovative features intended to make interstate collection of child support faster and more efficient.

Passage of UIFSA, however, has raised questions about the viability of a few of its provisions. Specifically, constitutional issues relating to jurisdiction and due process, not discussed by the Minnesota Legislature prior to enactment, will need to be resolved at some future date by the courts.

Finally, UIFSA is the states' last chance to oversee collection of child support. The federal government is waiting to see if, under UIFSA, substantial progress is made in dealing with the child support problem. If not, Congress will most likely step in and federalize the entire support effort.